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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 MARLEN MARTINEZ,

4 Plaintiff,

5 v.

10-CV-5163 (CM)

6 ST. BARNABAS HOSPITAL,

7 Defendant.

Jury Trial

8 -----x

New York, N.Y.
October 10, 2012
9:59 a.m.

10 Before:

11 HON. COLLEEN McMAHON,

12 District Judge

13 APPEARANCES

14 LAW OFFICES OF LEE NUWESRA
15 Attorneys for Plaintiff
16 BY: LEE S. NUWESRA, ESQ.

17 EPSTEIN BECKER & GREEN, P.C.
18 Attorneys for Defendant
19 BY: DAVID W. GARLAND, ESQ.
20 JOHN F. FULLERTON, III, ESQ.

21 ALSO PRESENT: KEITH WOLF,
22 Senior Vice President & General Counsel
23 ST. BARNABAS HOSPITAL
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(Trial resumed)

(In open court; jury not present)

THE DEPUTY CLERK: Case on trial is *Martinez v. St. Barnabas Hospital*. Plaintiff is here, Defendant is here, jurors are in the jury room.

THE COURT: Okay. Have a seat. I hear somebody sensibly made exhibit binders. That's fine. Great. I encourage that always.

I will instruct the jury that they're not to look at the exhibits until I tell them that they can look at a particular exhibit. That happens to be, I think, a very smart way to handle the exhibit issue, especially since the courtroom is rather ill-equipped for audio-video.

MR. NUWESRA: Your Honor, they only brought the defendants' exhibits.

THE COURT: They don't have to copy your exhibits.

MR. NUWESRA: I'll bring in my exhibits.

THE COURT: You can do whatever you want.

MR. NUWESRA: Okay.

THE COURT: Okay. Are you ready to go?

THE WITNESS: I'm sorry, your Honor?

THE COURT: Are you ready to go?

THE WITNESS: Yes, ma'am.

THE COURT: Then get back up here.

(Jury present)

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1 THE COURT: Okay. Good morning. Have a seat. Good
2 morning, everyone. We're ready to go.

3 Ms. Martinez, you are still under oath. You're still
4 on direct. You may begin.

5 MR. NUWESRA: Good morning, your Honor.

6 THE COURT: Good morning, sir.

7 MARLEN MARTINEZ, resumed.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. NUWESRA:

10 Q. Good morning, Ms. Martinez.

11 A. Good morning, Mr. Nuwesra.

12 Q. Before we broke for the day yesterday, you were testifying
13 about certain discrimination complaints you were making and you
14 mentioned a bunch of-- the names of a bunch of people. We
15 started by talking about-- or you were testifying about
16 Dr. Richardson and when you made such complaints to him.

17 Do you recall that, ma'am?

18 A. Yes, sir.

19 Q. All right. With regard to yesterday's testimony, can you
20 tell us when was it in relation to 2009 -- what month, what
21 time period -- in relation to your employment of 2009?

22 A. I complained to Dr. Richardson around July/August of 2009.

23 Q. Okay. And on how many occasions did you complain to
24 Dr. Richardson around July or August of 2009?

25 A. One time.

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Martinez - direct

1 Q. The other person that you mentioned that you complained to
2 was Ms. Agnes Lucero. Do you recall that?

3 A. Yes, sir.

4 Q. Can you tell us when in 2009 you complained to Ms. Lucero?

5 A. About the same time, sir.

6 Q. That's July or August of 2009?

7 A. Yes, sir.

8 Q. And what was it that-- what was the nature of your
9 complaints to Ms. Lucero in July or August of 2009? Please
10 tell the jurors.

11 A. I complained to Ms. Lucero of the fact that I wasn't
12 allowed to be charge nurse on an I.C.U. I also complained to
13 Ms. Lucero about the fact that she specifically told me not to
14 speak the Spanish language on the unit. However, I noted that
15 she will come on the unit, when she was supervisor, and she
16 will speak to the Filipino nurses in Tagalog and she would get
17 her report in Tagalog.

18 Q. And for us those of us who are not familiar, what is that?

19 A. That's the Filipino language.

20 Q. And what was it about the charge nurse issue that you
21 complained to her about?

22 A. I complained to Ms. Lucero about the fact that I had been
23 there for seven years and I had the qualifications of being
24 charge nurse. And she was one of the individuals who actually
25 made the list of the people assigned to be charge nurses in

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Martinez - direct

1 I.C.U., which was exclusively Filipino nurses.

2 Q. Another name you mentioned yesterday was Ms. Norma Ondoy.
3 Do you recall that testimony?

4 A. Yes, sir.

5 Q. When was it in 2009 that you complained to Ms. Ondoy of
6 discrimination?

7 A. Around June/July 2009, sir.

8 Q. And what was it that you complained to Ms. Ondoy about?
9 Tell the jurors in your own words.

10 A. The Spanish language. She was another supervisor that
11 actually told me I was not to speak Spanish on the unit. She
12 came in and spoke in Tagalog and greeted the nursing staff, the
13 Filipino nursing staff, in Tagalog and actually got her report
14 in Tagalog as well.

15 Q. Did you complain to Ms. Ondoy in June or July about
16 anything else that you felt was discriminatory?

17 A. The charge nurses. The charge nurse assignment, as well.

18 Q. Okay. What was it that you said to Ms. Ondoy regarding the
19 charge nurses? Please tell the jurors.

20 A. Ms. Ondoy-- the supervisors were involved in making the
21 list of who was going to be charge nurses on the unit. And I
22 was just kind of curious as to how come my name wasn't there
23 since I was there for seven years and I was already halfway
24 through my master's program.

25 Q. You also mentioned that you complained to Ms. Cathy Graham

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Martinez - direct

1 about your discriminatory treatment at the workplace. Do you
2 recall-- do you recall saying that last time you were here?

3 A. Yes, sir.

4 Q. When was it that you complained to Ms. Graham?

5 A. I complained to Ms. Graham around the end of August 2009.

6 MR. NUWESRA: That may be a witness.

7 THE COURT: She's most definitely not. Mr. O'Neill
8 will be speaking to Ms. Todd. I can tell you she's not a
9 witness.

10 MR. NUWESRA: Okay. Thank you, your Honor.

11 THE COURT: She's a lawyer.

12 MR. NUWESRA: I'm sorry.

13 Q. With regard to Ms. Graham, when was it that you complained
14 to her?

15 A. I complained to Ms. Graham around the end of August
16 2009/beginning of September.

17 Q. What did you complain to Ms. Graham about at the end of
18 August/beginning of September 2009?

19 A. I went to Ms. Graham's office on advisement of
20 Ms. Frances-Lattery after I had spoken to Ms. Frances-Lattery
21 and I had told her that I felt that I was being discriminated
22 against because I was black, Hispanic, and from Honduran
23 descent; that I was born there.

24 She told me that she-- I told her about the
25 disparaging treatment; that from April to August, I had noticed

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Martinez - direct

1 that the Filipino supervisor was giving preferential treatments
2 to the Filipino staff nurses. I told them about the charge
3 nurse assignment; that it was basically the Filipino
4 supervisors that made the list and it was only exclusively
5 Filipino charge nurses that were assigned to charge. No
6 minorities, no black or Hispanic.

7 I also told her about the cardiac cath training that I
8 had told Ms. Frances-Lattery that I was interested in. That
9 basically the Filipino supervisor, Ms. Castillo, along with the
10 other supervisors, actually made the list of who could train
11 for cardiac cath training, which was exclusively all Filipino.
12 There was no Latin, there was no Hispanic, there was no black.

13 And the fact that I was prohibited from speaking
14 Spanish on the unit when the supervisor -- and I witnessed and
15 I saw it and I heard it -- will come on the unit and speak to
16 the Filipino nurses in Tagalog, in their language, and get the
17 report in Tagalog. And I told Ms. Cathy Graham that I felt
18 that I was being discriminated because I was black, I was
19 Hispanic and I was Honduran and I was not Filipino.

20 Q. Besides telling you to talk to Ms. Graham, did Ms. Lattery
21 respond in any way, shape or form when you complained to her?

22 A. Ms. Lattery acknowledged my complaint, my concern. She
23 actually acknowledged my concern. She told me-- sorry. She
24 told me that upper management-- that continued complaining of
25 discrimination was not going to help me and that upper

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Martinez - direct

1 management were aware; that she had told the associate director
2 and Cathy Graham about my complaints and that it was not going
3 to help me and to be careful about my continued complaints of
4 discrimination.

5 Q. Did Ms. Lattery share with you the identity of the
6 associate director that she brought your concerns to?

7 A. She mentioned Ms. Quinones and Mr. Alvarado.

8 Q. Now, Ms. Martinez, I want to talk to you about the incident
9 of 9/14/2009. Were you scheduled to work on 9/14/2009?

10 A. I was called in because they were short of staff, to come
11 in and do overtime that day.

12 Q. And did you, in fact, work on that day?

13 A. Yes, sir.

14 Q. And what shift did you work on?

15 A. I worked the day shift, 7A to 7P.

16 Q. That's 7 a.m. to 7 p.m.?

17 A. Yes, correct, sir.

18 Q. And can you tell me, who were the supervisors on that day?

19 A. It was Ms. Agnes Lucero.

20 Q. Did Ms. Libiran-Danao work on that day?

21 A. No, she didn't, sir.

22 Q. Did Ms. Graham work on that day?

23 A. Ms. Graham was there.

24 Q. Did there ever come a time where you had to care for a
25 patient that has been identified at trial as Patient N?

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Martinez - direct

1 A. Yes, sir.

2 Q. Can you tell the jurors, when did you take charge or when
3 did you start caring for Patient N on that day?

4 A. I started caring for Patient N on 9/14 at approximately
5 1:30, 2 o'clock p.m. that afternoon, sir.

6 Q. Okay. Would you please tell the jurors in your own words
7 what transpired at around between 1:30 to 2 o'clock that caused
8 Patient N to come to your unit and be under your care?

9 A. Around 1:30, 2 o'clock, Patient N was on the sixth floor,
10 which is a medical-surgical floor. Apparently she had been
11 agitated and restless all morning. They had medicated her, and
12 then she started having seizures so they decided to bring her
13 to the intensive care unit, telemetry side, for closer
14 monitoring because of the seizures.

15 Q. And to the best of your recollection, did you have any
16 other patients to care for on that day?

17 A. Yes, sir. I had four other patients to care for on that
18 day. The telemetry side, it's 5 to 1. Five patients to one
19 nurse.

20 Q. Okay. And did there ever come a time where there were any
21 special instructions given to you by any of the attendings or
22 other doctors that you worked under on that day with regard to
23 Patient N?

24 A. Patient N came to the unit because of continuous seizures.
25 So when she got on the unit, the physician told me that they

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Martinez - direct

1 were going to order an EEG for her to be done, which is an
2 electroencephalogram, to find out the monitoring of the
3 activity of the brain, to check the seizure activity. They
4 were going to order a lumbar puncture for her, which is an LP
5 which actually checks if there's any bacteria, and check the
6 spinal fluid that was taken from the spinal cord to see if
7 there was anything going on in the brain. And that they were
8 going to order an MRI for the patient, another study for the
9 brain to see what's going on in her brain.

10 Q. And who was this physician?

11 A. Dr. Nandipati.

12 Q. And did there ever come a time when Dr. Nandipati gave any
13 orders with regard to the MRI?

14 A. Dr. Nandipati wrote some admission orders. Usually when
15 the patient comes from another floor, the doctor that's taking
16 care of her, that's accepting her-- the attending accepts her,
17 goes to the floor and accepts the patient and then sends her to
18 either District 1, District 2 or District 3.

19 So on the consult, when the doctor from the floor
20 calls and says, "We think this is an I.C.U. patient," the
21 attending will go upstairs and evaluate the patient and say I
22 accept to any one of those districts.

23 So Ms. N was accepted to District 3. When she got on
24 the unit, there's a resident that's in charge of taking care of
25 the patient. So the resident assigned was Dr. Nandipati. So

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Martinez - direct

1 he had to do some admission orders when the patient comes on
2 the unit. And he wrote "Patient took over to MRI, 6
3 milligrams" -- he ordered some medication, 6 milligrams of
4 Ativan, intravenous push now. And the admitting orders was-- I
5 believe it was 1:30 or 2 o'clock. I don't really recall. But
6 the orders-- she was scheduled to go to MRI at 5:00. So it was
7 to be given prior to going to MRI so she could be sedated.

8 Q. And did there ever come a time where you administered the
9 doctor's orders with regard to the medication?

10 A. Yes, sir.

11 Q. Please tell the jurors what you did and when was it that
12 you did it in order to effectuate that.

13 A. I saw the order. The doctor verbalized it to me. I went
14 and verified the order because everything that the doctor
15 verbalizes, you've got to follow through with an order. You
16 cannot give a medication without an actual order. I checked
17 the order. I saw that it was 6 milligrams of Ativan.

18 I got the key. And I remembered that Ms. Cora Fischer
19 was coming from the medication room, so I got the key from
20 Ms. Cora Fischer. It was approximately 5:00. I went in, got
21 my two -- three vials of Ativan, because it was 2 milligrams
22 per vial and the order was 6 milligrams. I got 3 milligrams--
23 three 2-milligrams-of-Ativan vials. I put it in a syringe,
24 went to the patient's bedside, rechecked my order, checked the
25 patient that it was the right patient, the right dosage, and it

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Martinez - direct

1 was IV pushed. I made sure the IV was working. I flushed it
2 initially to make sure that it was fastened, and I gave her 6
3 milligrams of Ativan at 5:00.

4 Q. You mentioned earlier or you testified earlier that
5 Dr. Nandipati gave you the verbal order and your words were you
6 have to check for an actual order. Can you tell us what you
7 meant by that?

8 A. St. Barnabas doesn't allow any verbal orders. It's against
9 their policy. So in order for me to follow through on an order
10 given by a physician, I had to make sure that there was
11 actually a written order in the chart for me to go and get the
12 medication and actually give it to the patient.

13 Q. Is this written order committed exclusively to medication
14 orders at St. Barnabas or does it involve other kinds of
15 orders?

16 A. It involves everything that has to do with the patient. It
17 involves laboratory, it involves activity of the patient, if
18 you want the patient to be out of bed or on bedrest, in bed
19 exclusively. It involved medication, narcotics or
20 nonnarcotics. It involved procedures for the patient.

21 Q. When you went to retrieve the medication for Patient N, did
22 you have to do anything at the medication area?

23 A. I had to-- we have an administration, drug administration
24 narcotic log-in sheets that you have to document what
25 medication you are taking out.

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Martinez - direct

1 Q. Okay. And is this log-in sheet known by any other name?

2 A. It's narcotic administration medication sheet.

3 Q. And what did you have to do in logging in the medication?

4 Just tell the jurors what you had to do.

5 A. You've got to write in the patient's name. You've got to

6 write in the time that you're taking out the medication.

7 You've got to check off -- because the medication is itemized

8 in columns. You've got to check off how many medications you

9 took, how many medications was there to begin with, subtract so

10 you could see how many balance is there. You've got to sign

11 your name and then you've got to sign the attending physician's

12 name or the doctor's name at the side.

13 Q. You sign them or you initial them?

14 A. You have to sign-- well, not sign. You write the name of

15 the doctor that's ordered the medication, but you would write

16 your name. And at the bottom of the sheet -- all the nurses in

17 St. Barnabas had a stamp. They gave us a stamp because not

18 everybody's signature is legible. So they give you a stamp so

19 that they'll know whose signature belongs to what nurse so you

20 can identify.

21 Q. Incidentally, Patient N, when she came to your area to care

22 for, what district were you assigned to on that day?

23 A. District 3.

24 Q. And when you went to get the keys from Ms. Fischer, was it

25 in District 3 that you got it?

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Martinez - direct

1 A. Yes, sir.

2 Q. She was working in District 3 on that day, Ms. Fischer?

3 A. No, Ms. Fischer was working in District 1.

4 Q. I see.

5 Was Ms. Fischer in District 3 when you retrieved the
6 keys, or where was she?

7 A. She was coming out of the medication room in District 3.

8 Q. I see.

9 So she was retrieving the medication from District 3?

10 A. She was retrieving the medication from the narcotic--
11 narcotic bin in District 3 because she had the narcotic keys.

12 Q. Did District 1 have their own medication area where they
13 can get their own medications?

14 A. Yes. District 1 has narcotic medication.

15 Q. Did they have the same or similar medications in District 1
16 like they had in District 3?

17 A. Yes, even more so. They have more medication in District
18 1, but they had all the medication in District 3 plus more.

19 Q. I see.

20 Now, when you checked out this medication and signed
21 out for it, did you observe anything on that narcotic
22 administration sheet?

23 A. I observed that Ms. Cora Fischer had documented her
24 medication at 6:00 and it was actually 5:00.

25 Q. What do you mean? Please tell the jury.

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Martinez - direct

1 A. When I went in to take out my medication, I knew it was
2 5:00, because the patient was scheduled to go to MRI at 5:00.
3 And I knew it was 5:00 because Ms. Agnes Lucero was the
4 supervisor and the nurse that was assigned to be in MRI, in the
5 radiology department. Usually when an I.C.U. patient goes off
6 the unit, the nurse have to go with the patient because the
7 patient is on cardiac monitor. And there's a nurse assigned to
8 the radiology department for the radiological procedures:
9 X-ray, CAT scan, MRI.

10 So it was 5:00, because the nurse was supposed to
11 leave at 5:00. And I knew it was almost 5:00 because I asked
12 Ms. Lucero if she could call the supervisor in radiology,
13 Mrs. Grantham, to call and to see if the nurse in radiology
14 could stay longer, an hour longer, so the MRI could be done for
15 the patient because I couldn't leave. I had four other
16 patients in the back I need to monitor.

17 So Ms. Lucero called and asked the manager in
18 radiology if she could allow Ming -- that's the name of the
19 nurse, another Filipino nurse, in radiology. The supervisor
20 was also Filipino. -- if she could allow Ming to stay longer
21 so she could monitor my patient. That's how I knew it was
22 actually 5:00.

23 Q. Did you do anything when you realized that Ms. Fischer had
24 checked out at 6 p.m. rather than the time that you were there?

25 A. Yes, I did. Yes, I did, regretfully so. Yes, I did.

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Martinez - direct

1 Q. What did you do?

2 A. I changed Ms. Fischer's time. I corrected it. It was
3 5:00. She had put 6, and I corrected it to reflect the right
4 time. So I changed it from 6 to 5, because I had taken my
5 medication at 5:00 and I knew it was 5:00.

6 Q. Now, why did you do that?

7 A. Because the narcotic administration record needs to reflect
8 the real time when you take out medication. And they were very
9 diligent with the instruction, in in-service given at
10 St. Barnabas about that. So after they did that, she was in
11 District 1, which is the main I.C.U. She had two patients.
12 She must have been emergently needing that medication and she
13 inadvertently put 6:00 instead of 5. So I thought I was
14 helping her.

15 Q. In relation to your entry on that sheet, where was her
16 entry in relation?

17 A. It was above my entry.

18 Q. Directly above it?

19 A. Directly above my entry. Hers was right before my entry.

20 Q. Now, after you administered the Ativan to Patient N, did
21 you have to do anything with regard to recording such
22 administration of medication?

23 A. On the medication record -- every patient has a medication
24 record. And I mentioned that yesterday, that when the doctor
25 writes an order, they usually flag it. And you're able to go

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Martinez - direct

1 look at the order and you have to go pick it up. Pick up
2 meaning that you need to transcribe it into the medication
3 administration record. That's part of the medical record. And
4 in the back you have to document, you know, what was given.
5 And it starts again with your initial, the time, the
6 medication, and what time it was given.

7 Q. Is this medical record that you just testified about
8 different than the narcotic administration sheet?

9 A. Yes.

10 Q. How is it different?

11 A. The narcotic administration sheet logs in the medication
12 that you take out of the narcotic cabinet and it keeps track of
13 the narcotic medication taken out of the narcotic cabinet. And
14 the medication administration record actually documents the
15 medication that you give a patient and at what time you gave it
16 to the patient.

17 Q. Where is the narcotic administration record kept?

18 A. In the medication room.

19 Q. Okay. Where was the medical record that you had to look to
20 for flagging and so on located?

21 A. In the med-- in the patient's chart.

22 Q. And where is that patient chart located?

23 A. At the nurses' station.

24 Q. Now, you mentioned earlier that you had Ms. Lucero contact
25 the radiology department to do the MRI for 6:00.

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Martinez - direct

1 Did there ever come a time where you did effectuate
2 Dr. Nandipati's order for the MRI?

3 A. The patient went for an MRI. The patient went with the
4 transporter. There was a physician that accompanied the
5 patient to the MRI and a nursing attendant that accompanied the
6 patient to the MRI for safety reasons, because she was agitated
7 and restless initially and she was having seizures.

8 Q. And what time-- what time was Patient N presented at the
9 MRI location?

10 A. The patient left the unit at five and the MRI is right
11 below the fifth floor. We're on the fifth floor in M.I.C.U.
12 and the MRI is on the fifth floor, radiology department.

13 Q. So in relation to 9/14/2009-- and I'm just trying to make
14 sure that I understand the time line-- Patient N left your unit
15 at 5:00 to get her MRI at six?

16 A. The MRI was actually ordered at five. It says "Patient to
17 go to MRI at 5:00 to get Ativan 6 milligrams IV push" at that
18 time before going to MRI. So the patient left -- I gave her
19 the medication and by 5:00 she was gone.

20 Q. Okay. Did anything happen to Patient N while she was at
21 the MRI location at the radiology department?

22 A. At the radiology department, the resident that went with
23 the patient and the radiologist called and said that the
24 patient was still restless and she was agitated and she
25 couldn't keep still to do the MRI, and that her pressure had

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Martinez - direct

1 dropped to 80/40, if I'm not mistaken.

2 So I advised the patient-- the doctor, the resident--
3 because she had taken Ativan on the go, just in case they
4 needed another Ativan to give to the patient so that the
5 procedure would be completed. So when she told me that the
6 blood pressure had dropped to 80/40, I advised her-- and she
7 didn't feel comfortable. She said, "I don't feel comfortable
8 giving this additional Ativan." And I advised her to bring the
9 patient back and that the test will have to be rescheduled
10 because I didn't want the patient to decompensate further in
11 the MRI.

12 Q. And this Ativan that the patient-- when you said that there
13 was an Ativan on the go in case the patient needed it, can you
14 tell us what that means?

15 A. The Dr. Nandipati ordered to give 6 milligrams Ativan IV
16 push now for MRI, and then he ordered to give to-- he
17 instructed to give 2 milligrams additional Ativan to the doctor
18 on the go to Ativan-- on MRI to-- on the go to MRI just in case
19 the patient needed it.

20 Q. So this is above and beyond the six that you administered,
21 6 milligrams?

22 (Continued on next page)

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Martinez - direct

1 BY MR. NUWESRA:

2 Q. And what happened after you learned that the MRI wasn't
3 going to happen on that day?

4 A. The patient came back to the unit and the patient was
5 placed back on the bag, she was placed back on the monitor, she
6 was monitored -- I assessed her, and I notified the physician
7 and the resident also told the physician the MRI could not be
8 done because the patient was restless and her blood pressure
9 had dropped, and I documented it.

10 Q. And where did you document that?

11 A. In the medical ICU flow sheet of the patient.

12 Q. Do you know around what time the patient came back to the
13 unit from the MRI?

14 A. The patient came around 6:00.

15 Q. Did you work a full shift that day?

16 A. Yes, sir.

17 Q. Did anything happen towards the end of your shift on that
18 day?

19 A. Toward the end of my shift that day Ms. AnaRicca Libiran
20 notified us that there was three vials of morphine missing,
21 from the narcotic cabinet.

22 Q. Was that unusual?

23 A. It was unusual. It was unusual.

24 Q. Okay. And just refresh our memory. Ms. AnaRicca Libiran
25 was another -- what was she? What was her position at the

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Martinez - direct

1 time?

2 A. Ms. AnaRicca Libiran, in District 3, she was another staff
3 nurse, registered nurse in MICU. During the shift that day,
4 there was five of us that had access to the narcotic cabinet.
5 Ms. AnaRicca Libiran -- 'cause I mentioned yesterday that the
6 agency nurse would not have access but the staff nurse have
7 access to the key. So when I say access, we were able to go
8 into the narcotic cabinet with the narcotic keys and get
9 narcotics out of the cabinet. In District 3 there was five of
10 us that had access to the narcotic cabinet. Assigned to work
11 in District 3 was AnaRicca Libiran, Cleo DeJesus, Othilyn
12 Gonzalez, and myself, but in addition, Cora Fischer came from
13 District 1 and got medication from the District 3 cabinet.

14 Q. Now were any of these other staff nurses nonFilipino
15 besides you?

16 A. No. They were all Filipinos except for me.

17 Q. And can you tell the jurors what happened after you was
18 advised by Ms. AnaRicca Libiran that there was -- I think you
19 said three vials of morphine missing? Tell the jury what
20 happened.

21 A. She asked if anybody had to use morphine during the shift
22 aside from herself. She went through District 1, District 2 to
23 see, 'cause the staff nurses had access, so anybody from any of
24 those two districts could have had gone in there, borrowed the
25 key from anybody and got into the narcotics. So she actually

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Martinez - direct

1 asked in District 1, District 2, if anybody had gotten morphine
2 from District 3 and forgot to document or didn't document it.
3 She called the manager, because we couldn't -- we looked all
4 over, we couldn't find, and nobody said they used any morphine.
5 She called the manager, and then the manager came down to
6 medical ICU, Ms. Norma Ondoy, and Ms. Norma Ondoy requested for
7 all the nurses in District 3 to write a statement pertaining to
8 who your patient were and what medication you gave to the
9 patient, if you had any use or any patient on morphine sulfate
10 on that shift.

11 Q. Did you do that?

12 A. Yes, sir.

13 Q. All right. And what happened after you gave that
14 statement?

15 A. Ms. Norma Ondoy called security and the security came to
16 District 3 area and they went through our purses and basically
17 checked through all our belongings and then we were allowed to
18 go home.

19 Q. Were you scheduled to work the next day?

20 A. Yes, I was scheduled to work the next day.

21 Q. And did you show up to work on the 15th of September
22 2009?

23 A. Yes, I showed up to work on the 15th.

24 Q. And were you scheduled to work the same shift you did the
25 day before?

Caalmar2

Martinez - direct

1 A. 7 a.m. to 7 p.m., yes.

2 Q. And where were you assigned on that day?

3 A. I was assigned in District 2.

4 Q. District 2.

5 A. District 2.

6 Q. Do you know whether Patient N continued to be in District 3
7 on the 15th of September 2009?

8 A. I wasn't sure until the family members showed up and I was
9 passing by, and they approached me, the mother, to be specific,
10 and the mother asked me -- she apparently have gone to the room
11 where she was at in District 3 and she didn't see her, so she
12 approached me, 'cause I was the nurse and I had a rapport with
13 her from the previous day, and she says, "I don't see her in
14 District 3," you know, "You know what happened to my daughter?"
15 And I recognized her. So I'm like, "Let me see if I could help
16 you." So then I looked in the computer to see if they had
17 moved her to another unit or if she had been moved up to any
18 room inside.

19 Q. And what did you find?

20 A. She had been moved into District 1, Room 504.

21 Q. And based on your research do you know what time she was
22 moved or relocated to District 1?

23 A. Early in the morning. She was relocated at the
24 beginning -- almost at the beginning of the shift, like around
25 8:30, 8:45.

Caalmar2

Martinez - direct

1 Q. And did your research indicate whose care she was under on
2 that day, on the 15th of September 2009?

3 A. I actually walked the mother over to District 1 to where
4 she was at, and she was being taken care of by Cora Fischer.

5 Q. And this is the same Cora Fischer whose entry you corrected
6 and you got the keys from --

7 A. Yes.

8 Q. -- the day before?

9 A. Yes, same Cora Fischer.

10 Q. Did anything happen -- after you related that information
11 and took the mother to District 1, did anything happen that was
12 unusual during your shift on that day?

13 A. At -- towards the end of my shift that day -- I left the
14 mother in District 1 'cause I knew the doctor would approach
15 her, give her the update, and I was able to find out that the
16 patient was moved from District 3, which is a two-bed -- like I
17 say, usually District 1 is for isolation. So after --
18 apparently after they took out the -- the LP, or the lumbar
19 puncture -- 'cause all that procedure was done in District 3
20 the night before. The EEG -- the MRI couldn't be done because
21 of the patient blood pressure and restlessness. They did the
22 lumbar puncture. Apparently they were ruling out meningitis,
23 and meningitis needed isolation. So that's why they moved the
24 patient to District 1, for isolation, so she could be in the
25 room by herself.

Caalmar2

Martinez - direct

1 So toward the end of the shift -- during the shift
2 there was an investigation that was going on for the missing
3 morphine from the previous night. So that's what was happening
4 during the shift.

5 Q. Incidentally, Ms. Martinez, when you made the correction on
6 Ms. Cora Fischer's entry the night before, did you advise
7 anybody that you did that at the hospital on the 14th of
8 September 2009?

9 A. I told Cora Fischer.

10 Q. And how soon after you made the correction you told
11 Ms. Fischer?

12 A. Shortly afterwards.

13 Q. And what was her response?

14 A. She was very thankful that I had corrected her time.

15 Q. Okay. So you were saying that towards the end of your
16 shift something happened.

17 A. Toward the -- during the shift they -- they were
18 interviewing us individually -- they meaning Agnes Lucero -- in
19 the conference room -- Agnes Lucero, Ms. Frances-Lattery was
20 present, and the pharmacist associate director, and another
21 lady, Fran somebody, from the pharmacist as well. They were
22 interviewing us one by one to find out what transpired the
23 night before.

24 Q. Okay. Do you recall what time you were interviewed?

25 A. Around 2 to 3.

Caalmar2

Martinez - direct

1 Q. Can you tell the jurors what you were asked and what were
2 your responses during this interview and who did the
3 questioning.

4 A. The questioning was done by the associate director,
5 Ms. Patricia Byrne of pharmacy. She asked me if at any given
6 time I remember who I got the keys from, from all the five
7 nurse -- four nurse -- five nurses, we were four plus myself,
8 in the District 3 area -- if I remember any given time during
9 the 12-hour shift who I'd gotten the keys from. And I was
10 like, I don't remember. The only person I remember I got the
11 keys from at 5:00 was Ms. Cora Fischer, because I actually
12 corrected her time because she had entered the wrong time, so I
13 know vividly that it was 5:00. That was the only person I
14 could remember during the whole shift who I had gotten the keys
15 from, and I told the investigating team that.

16 Q. Incidentally, during that 12-hour shift did you have
17 occasions to retrieve other medications for the other patients?

18 A. Yes.

19 Q. Do you recall how many times?

20 A. Not off the top of my head at this time.

21 Q. Okay. And was it you that related the correction of time
22 on Ms. Fischer's entry to the team?

23 A. Yes.

24 Q. Okay. Did anything else happen during this interview
25 besides the interaction you just related to the jury?

Caalmar2

Martinez - direct

1 A. No. No. Not that I recall.

2 Q. Were you alone as far -- were you the only staff nurse that
3 was interviewed by this investigating team? Were you the only
4 staff nurse at the time or were there other staff nurses being
5 interviewed at the same time with you?

6 A. No, I was the only one. It was individually.

7 Q. And did you get to finish that -- your shift on that day,
8 the 15th of September?

9 A. Yes.

10 Q. Did anything happen prior to the end of your shift?

11 A. Prior to the end of my shift Ms. Frances-Lattery approached
12 me and she told me that I needed to meet her upstairs in a
13 nursing classroom with the union delegate.

14 Q. Do you know what time she told you this?

15 A. Like around 6:30.

16 Q. Okay. Did you inquire as to why you needed the union
17 delegate with her at that meeting?

18 A. She told me that she was going to discipline -- she had to
19 issue me a discipline.

20 Q. Did you respond to that?

21 A. I told her why, why I was going to get a discipline.

22 Q. Okay. Did you say anything else?

23 A. I asked her -- I, again, asked her why did I needed to get
24 disciplined, or what did I do, and she basically told me that I
25 needed to be -- that she was going to discuss it upstairs, when

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Martinez - direct

1 I got upstairs with the union delegate. And I said, "Is this
2 because I complained of discrimination? This is, you know --
3 this is -- this is because I complained, you know, of
4 discrimination?" We had that conversation. And she just said,
5 "Meet me upstairs with the union delegate."

6 Q. And did you have that meeting with the union delegate and
7 the -- and Ms. Lattery?

8 A. Yes. I went upstairs with the union delegate.

9 Q. Can you tell the jury what transpired at this disciplinary
10 meeting.

11 A. When we got -- when I got upstairs, the union delegate was
12 already there, Ms. Lisa Greene. And Ms. Norma Ondoy was there
13 and Ms. Frances was there, and Ms. Frances basically said that
14 I was being disciplined because of the inconsistent --
15 inconsistency of the documentation on the narcotics sheet.

16 Q. Did you inquire what she meant by that?

17 A. Yes, I did.

18 Q. What did she say?

19 A. She told me that -- that -- I -- I asked her what does she
20 mean, and she said that I had said in the investigatory --
21 investigation that I had changed Ms. Cora Fischer's time and
22 that Ms. Cora Fischer had said that she had corrected herself
23 in changing the time on the narcotics sheet, so because there
24 was inconsistency in the story, she decided to discipline me
25 and Cora Fischer.

Caalmar2

Martinez - direct

1 Q. Did she give you any other reason whatsoever besides the
2 inconsistency of the story for your discipline at that time?

3 A. She had also told me that Patient N had came out positive
4 to opiate that afternoon. Actually, she told me she was
5 positive to morphine that afternoon. That's the word that she
6 utilized.

7 Q. What's the difference between morphine and opiate?

8 A. Opiate is the generalized classification of the drug.
9 Opiate can be hydromorphone, it could be Percocet, it could be
10 Tylenol #3, and it could inclusively be morphine. And in order
11 for you to know if it's morphine, tests have to be specific to
12 morphine, and she just said that the patient had tested
13 positive to morphine.

14 Q. Did there ever come a time during that day before your
15 suspension that you found out otherwise -- something other than
16 what they told you at that -- at that suspension meeting?

17 A. Yes.

18 Q. Please tell the jury what was it that you found out and
19 when you found out.

20 A. I checked -- when I was looking for the patient to locate
21 her, you can actually see the lab records and everything about
22 the patient, and I had checked everything about the patient,
23 trying to locate the patient for the mom, and I had noted that
24 the urine toxicology had shown that the patient was positive to
25 opiates and benzodiazepine, so when Ms. Lattery upstairs told

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Martinez - direct

1 me that the patient was positive to opiate -- to actually
2 morphine, she said. And I said the patient should have been
3 also positive to benzodiazepine, because I gave her Ativan, and
4 Ativan is a benzodiazepine. And she says, "All I'm telling
5 you, that this says positive, the patient is positive to
6 morphine."

7 Q. And do you recall what time that urine toxicology was done
8 on the 15th of September 2009?

9 A. It was 12:50 something, almost 1:00 in the afternoon.

10 Q. And who was caring for this patient at 1:00 in the
11 afternoon on September 15, 2009?

12 A. Cora Fischer. Ms. Cora Fischer.

13 Q. Now when you were suspended at the end of your shift, did
14 you talk to anybody regarding your suspension on that evening?

15 A. I called Dr. Mervin Richardson that evening.

16 Q. Who's that?

17 A. Dr. Mervin Richardson.

18 Q. Is that the assistant director of pharmacy?

19 A. Yes.

20 Q. And why did you call Dr. Richardson?

21 A. Dr. Richardson was more like a mentor to me. He was
22 assigned in ICU, he was very knowledgeable about medication,
23 and I had complained to him before about discrimination. So I
24 basically called him -- I called him, I was like distraught.
25 I'm like, I can't believe it, I can't believe it, you know,

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Martinez - direct

1 they retaliated, they unjustifiably blamed me for
2 misadministering medication. This is retaliation. They're
3 discriminating against me. And they're retaliating against me.

4 Q. Did there ever come a time where you returned to St.
5 Barnabas after the 15th of September 2009?

6 A. No.

7 Q. Are you a member of any union?

8 A. 1199.

9 Q. And is that the same union where Ms. Lisa Greene is a
10 delegate there who was at the disciplinary meeting with you?

11 A. Yes, yes.

12 Q. Did there ever come a time after your suspension where you
13 contacted her regarding your suspension?

14 A. Yes.

15 Q. When was it?

16 A. She called me.

17 Q. Okay.

18 A. On the 17th of September 2009.

19 Q. All right. And why did she call you?

20 A. She called me in the evening of that day and she told me
21 that St. Barnabas had two offers. Actually, she said that St.
22 Barnabas wanted me to resign and -- or they want to report me
23 to the state for negligence.

24 Q. Was anybody else privy to this conversation with
25 Ms. Greene?

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Martinez - direct

1 A. My sister.

2 Q. How was she -- can you tell the jury how she was privy to
3 this conversation.

4 A. When I was suspended, not only did I call Mervin
5 Richardson, but I called my sister, and I called my sister
6 because she's a licensed attorney in the state of New York, and
7 I had never been in such a situation so I needed to talk to
8 somebody, and she's an attorney, and that's my sister, so I
9 called her. And when I spoke to Lisa Greene, I had my sister
10 on a conference call with Lisa Greene.

11 Q. Did Lisa Greene know about that?

12 A. Yes. I told Lisa Greene that I was bringing my sister in
13 on the conversation.

14 Q. Okay. At the time that Ms. Greene related to you that the
15 hospital would like your resignation, were you interested in
16 that?

17 A. No.

18 Q. Why not?

19 A. I'm a single mom. I needed my job. I was interested in
20 getting my job -- I had my child in a private school, I had
21 bills to pay, and I liked working at St. Barnabas. I was
22 disappointed of being unjustifiably accused of something that I
23 never did, but I liked to work there. I liked my job. So no,
24 I wasn't interested in resigning. I told her I didn't mind if
25 they reported me to the state because I didn't do anything

Caalmar2

Martinez - direct

1 wrong.

2 Q. Did you ask that the union or Ms. Greene ask for your job
3 back?

4 A. Ms. Greene made it clear that she was going to defend
5 Ms. Cora Fischer. In the conversation she actually mentioned
6 to my sister and myself that they have resolved Cora Fischer
7 case and that she had met earlier that day with Ms. Cathy
8 Graham and that she was already being reinstated back to her
9 position.

10 Q. Did Ms. Lisa Greene tell you in any shape or form that you
11 needed to contact Ms. Graham regarding your job?

12 A. No, she never did.

13 Q. After you were suspended, when you were on suspension, did
14 you complain to anybody else or relate to anybody else besides
15 Dr. Richardson about your -- what you claimed to be retaliatory
16 suspension, about the hostile treatment of you with regard to
17 that treatment?

18 A. I complained to Dr. Richard Stumacher.

19 Q. Can you tell the jurors who contacted who during that
20 complaint -- conversation.

21 A. Dr. Richard Stumacher called me. He said that he had came
22 to work and he hadn't seen me for like two days, three days,
23 and he was wondering where I was, so -- and I told him that I
24 complained of discrimination and in retaliation to my complaint
25 of discrimination, I was suspended indefinitely.

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Martinez - direct

1 Q. Was this call made to you after Ms. Fischer had been
2 reinstated?

3 A. Yes.

4 Q. Did you share anything else regarding your discrimination
5 concerns by St. Barnabas?

6 A. I told Dr. Stumacher that I was suspended with Ms. Cora
7 Fischer and I shared with him what I was accused of -- that I
8 was accused of misadministering a narcotic to Patient N, and I
9 was also accused of missing morphine -- blamed for missing
10 morphine, and that I thought it was all retaliatory because I
11 had initially complained of discrimination.

12 Q. Did you do anything to actively seek your job back from St.
13 Barnabas while you were on suspension?

14 A. When my sister was privy to the conversation with Lisa
15 Greene, my sister advised me to find a private attorney --

16 MR. GARLAND: Objection.

17 THE COURT: The objection is sustained.

18 MR. GARLAND: Thank you.

19 Q. Just answer my question, please, all right?

20 A. Mm-hmm.

21 Q. After your suspension and after your conversation with
22 Ms. Greene, did you do anything to actively seek your
23 reinstatement by the hospital; yes or no?

24 A. Yes.

25 Q. Okay. What did you do besides talking to your sister?

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Martinez - direct

1 What was it that you did?

2 A. I grieved. I called my 1199 representative and I grieved
3 the indefinite suspension.

4 Q. Okay. Did you talk to anybody from the union during this
5 grievance stage?

6 A. I spoke to Ms. Nadine Williamson.

7 Q. And what is her relationship to the union?

8 A. She's a union organizer.

9 Q. Does she work for St. Barnabas Hospital?

10 A. No.

11 Q. Does Lisa Greene work for St. Barnabas Hospital?

12 A. She worked at St. Barnabas Hospital, in the emergency room.

13 Q. Ms. Greene does; right?

14 A. Yes, and she also work in 1199 headquarters.

15 Q. Did there ever come a time where Ms. Nadine -- what was her
16 last name?

17 A. Williamson.

18 Q. Did there ever come a time where Ms. Williamson related to
19 you during your grievance period that the hospital wanted
20 you -- or Ms. Graham specifically wanted you to contact her?

21 A. No.

22 MR. GARLAND: Objection. Leading, hearsay.

23 THE COURT: Hang on a second.

24 Yes. Stricken. No answer.

25 Q. Did there ever come a time where you learned from anybody

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Martinez - direct

1 at the union that the hospital or Ms. Graham wanted you to
2 contact them?

3 A. No.

4 Q. When was it for the first time that you learned or found
5 out that Ms. Graham wanted you to contact her?

6 A. When I received a letter from Ms. Graham, it was dated the
7 12th, but I received it on the 20, 21st of October.

8 Q. When?

9 A. 20, 21st of October, 2000 --

10 Q. The 20th or the 21st of October, 2009?

11 A. 2009.

12 Q. Do you know -- how was the letter sent to you?

13 A. It was sent by certified mail that I have to pick up at the
14 post office.

15 Q. Did you do anything once you received the letter on or
16 about October 20th or October 21st, 2009?

17 A. I called Ms. Nadine Williamson and I --

18 Q. And why did you call her?

19 A. I -- I was telling her that I had just received a letter
20 from St. Barnabas, from Cathy Graham, and that I have received
21 it on that day, on the 20th or the 21st of the month of
22 October, 2009.

23 Q. Did you share anything about that letter with
24 Ms. Williamson that you thought was unique?

25 A. I read it to her and I faxed her a copy. I told -- I told

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Martinez - direct

1 her that it had actually said for me to contact Ms. Cathy
2 Graham about my position as a RN in St. Barnabas Hospital, but
3 she was surprised that the letter --

4 MR. GARLAND: Objection.

5 THE COURT: Read back up to the objection.

6 (Record read)

7 THE COURT: Okay. "St. Barnabas Hospital," period,
8 end of answer.

9 Next question?

10 Q. So the best of your recollection was this letter that you
11 received about October 20th, was it cc'd to anybody else
12 besides you? Was it copied to anybody else?

13 A. No, it was not.

14 Q. And why did you contact the union regarding it?

15 A. Because I had asked the union to grieve my indefinite
16 suspension so I wanted her to follow up on the letter.

17 Q. And what did she say to you?

18 MR. GARLAND: Objection.

19 THE COURT: It's sad that I can't figure out whether
20 it qualifies for hearsay or not. It looks like it's being
21 offered for the truth of the matter asserted so I can't allow
22 it in. The objection is sustained.

23 Q. When was it that you found out you were terminated by the
24 hospital?

25 A. I found that I was terminated around the same time. Maybe

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1 a day later, I received a letter from human resource stating
2 that I was terminated as -- my position was terminated.

3 Q. Did you grieve that termination as well?

4 A. Yes. I called Ms. Williamson again and I told her, "I
5 called you yesterday about this letter, and I received a letter
6 today that I was terminated."

7 Q. Were you under any specific instructions by the union
8 regarding communication by St. Barnabas in your suspension?

9 A. No.

10 Q. How was your communication with the hospital was supposed
11 to be, based on the procedure with the union?

12 A. The union was supposed to notify -- well, actually, the
13 hospital was supposed to notify me when I needed to go in.
14 They were supposed -- supervisor or somebody was supposed to
15 call me when I needed to go in after the indefinite suspension.

16 Q. Did there ever come a time where anybody from the hospital
17 contacted you between 9/15/2000 --

18 THE COURT: You mean September 15th?

19 MR. NUWESRA: September 15th.

20 THE COURT: Thank you.

21 MR. NUWESRA: Sorry, your Honor.

22 Q. -- between September 15th, 2009 and the day that you
23 received the letter from Ms. Graham?

24 A. No.

25 Q. Did you ever authorize me as your attorney to write the

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Martinez - direct

1 hospital on your behalf?

2 A. Yes.

3 Q. And if you recall, basically when was it in relation to
4 your suspension that you gave me that authorization to do?

5 A. It was shortly after my suspension.

6 Q. Was it days? I mean --

7 A. It was days.

8 Q. In relation to your conversation with Ms. Lisa Greene on
9 the 17th of September, was it before or after you had that
10 conversation with her?

11 A. It was after.

12 Q. Then you said that -- and correct me if I'm wrong -- that
13 the reason you did not opt for the resignation option is
14 because you're a single mom and you needed the money. Do you
15 recall that?

16 A. Yes.

17 Q. Would you please tell the jurors what was your annual
18 salary in 2008 when you worked a full year for the hospital at
19 St. Barnabas.

20 A. 99,000 and change.

21 Q. That's how much you made for that year.

22 A. Yes.

23 Q. Okay. Ms. Martinez, at this time I would like to have you
24 share with the jury what are you seeking in damages in this
25 lawsuit. Can you first tell me in general terms what you're

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Martinez - direct

1 seeking.

2 A. I'm seeking economic damages, I'm seeking compensatory
3 damages --

4 THE COURT: You're using legal terms -- economic
5 damages, compensatory damages. You've obviously talked to a
6 lawyer about this. Why don't you tell the jury what you want.

7 A. When I worked there in 2008, 2007, my annual salary was
8 approximately 99 to a hundred grand a year. 2008 -- 2007 was
9 99 and change. 2008 was 96 and change. In 2009, it came down
10 to like 72,000. That's the year I was unjustifiably
11 terminated. 2010, I only made 45,000.

12 Q. Okay. Now when you said salary, you mean that's how much
13 you made for that year.

14 A. Yes.

15 Q. For those years. I'm sorry.

16 A. For those years.

17 Q. And you only worked through 9/15 in 2009. That's why you
18 only made \$72,000 for that year?

19 A. Yes.

20 Q. When was it that you was able to get a job, a full-time job
21 where you started making the same kind of money like you were
22 making at St. Barnabas?

23 A. September -- when I was hired in my new job, September
24 2010.

25 Q. And did that new job that you were hired at pay you

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Martinez - direct

1 comparable salary as -- as St. Barnabas?

2 A. Initially, no, but afterwards, yes.

3 Q. Okay. When in 2010 did you start making the same kind of
4 money?

5 A. Maybe three, four months into the year.

6 Q. Into 2011?

7 A. Like September. September, November, October. Like around
8 January -- actually, it's not -- December 2010 to January 2011.

9 Q. Okay. And so you're seeking the difference that you would
10 have made had you continued with St. Barnabas versus the money
11 you made -- you start making as of December 2010; correct?

12 A. Correct.

13 Q. And do you have a rough estimate how much is that, based on
14 your calculation?

15 A. Like 80,000.

16 Q. Did you lose any other benefits as a result of your
17 termination?

18 A. I was completing my master's and working full time at St.
19 Barnabas because I was in 1199. 1199 was the union, was paying
20 for my master's, so I had to pay the tuition, and I -- what I
21 needed for that, to complete my master's, so that was like
22 5,000.

23 Q. \$5,000?

24 A. Yes.

25 Q. Why should St. Barnabas be responsible for that if your

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Martinez - direct

1 union paid for it?

2 A. Because I had a full-time job at St. Barnabas, but that was
3 one of my benefits of working full time at St. Barnabas,
4 belonging to the union, working for St. Barnabas, and I lost
5 that because I was terminated.

6 Q. Okay. Did you have to be on St. Barnabas' payroll to
7 qualify for the tuition reimbursement by the union?

8 A. Yes.

9 Q. And I believe you mentioned when you obtained your
10 master's. Can you just refresh our memory.

11 A. May 2010.

12 Q. May 2010?

13 A. May 2010.

14 Q. And now you said that -- you used the word "compensatory
15 damages." What do you mean by that?

16 A. I went -- I was depressed, I was anxious, I was angry, I --
17 my self-esteem was shot, I had crying spells, I lost weight. I
18 was heavier. I lost sleep. I actually saw physicians for
19 that. There were times that I couldn't sleep, and I had to go
20 to my primary doctor and he gave me Ambien --

21 MR. GARLAND: Objection.

22 THE COURT: Overruled. She can say what her doctor
23 gave her.

24 A. The doctor gave me Ambien to sleep at night because I
25 couldn't sleep. I had to go see a gastroenterologist because I

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1 started having heartburns, because I wasn't eating as much. My
2 appetite decreased so I lost weight, and I started having
3 heartburn. So my doctor basically related it to stress.

4 MR. GARLAND: I didn't hear. Objection to the last --

5 THE COURT: She was told she had stress.

6 MR. GARLAND: Objection to that too.

7 THE COURT: Overruled.

8 Q. And after you saw your primary doctor, did you see any
9 other health care provider as a result of your termination?

10 A. Gastroenterologist.

11 Q. Did you see anybody for your depression and/or your stress
12 and anxiety?

13 A. I saw a psychologist.

14 Q. And how long did you treat with a psychologist?

15 A. I treated with a psychologist for a while. It was from
16 November 2009 to approximately February 2011.

17 Q. Did there ever come a time where seeing the psychologist
18 that the visits were interrupted?

19 A. Yes.

20 Q. When was that?

21 A. It was interrupted when the insurance stopped paying for
22 it. My 1199 insurance paid to -- I believe it was two to three
23 months afterwards, and then I had to pay for it. So I couldn't
24 pay for it, 'cause I wasn't working full time and I was working
25 part time, and I had my son in school and my bills, and I

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1 couldn't. So when I got my full-time job, I went back and saw
2 her again.

3 Q. Okay. And why did you stop seeing the psychologist in
4 February 2011?

5 A. Why did I --

6 Q. Why did you stop seeing the psychologist in February 2011?

7 A. She advised me that she was --

8 MR. GARLAND: Objection.

9 THE COURT: Not she advised you. Well, did she tell
10 you to stop coming; yes or no?

11 THE WITNESS: She retired.

12 THE COURT: Oh, she retired. Okay.

13 Q. Are you seeking anything else besides your lost wages and
14 emotional distress from this lawsuit?

15 A. Yes.

16 Q. What is it?

17 A. I want St. Barnabas to stop discriminating --

18 MR. GARLAND: Objection.

19 THE COURT: Overruled. She thinks she's a victim of
20 discrimination. Guess what, ladies and gentlemen? You're
21 going to decide that issue. So the fact that she says it
22 doesn't mean she was. Just the way she feels. You will decide
23 if her feelings are justified or if they are unjustified.

24 Q. Were you finished with that answer, ma'am?

25 A. No.

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1 Q. Please continue.

2 A. I want St. Barnabas to be penalized so that they can stop
3 discriminating on the basis of race, on the basis of color, and
4 on the basis of national origin.

5 THE COURT: Okay. Now we're getting a little
6 argumentative. So we don't need that.

7 MR. NUWESRA: Your Honor, can we take a break so I can
8 figure -- I'm kind of finished.

9 THE COURT: Well, you should be kind of finished, I
10 would think.

11 MR. NUWESRA: I just want to make sure I didn't leave
12 anything --

13 THE COURT: Okay. We'll take a five-minute break. I
14 wasn't going to take a break now, but we'll take a five-minute
15 break. Don't discuss the case, folks. Keep an open mind.
16 Five-minute break.

17 (Jury excused)

18 (Recess)

19 (In open court; jury present)

20 THE COURT: Ma'am, you're still under oath.

21 Any further questions for your client?

22 MR. NUWESRA: No, your Honor. Thank you.

23 THE COURT: All right. Then we will have
24 cross-examination.

25 MR. GARLAND: Thank you, your Honor.

Caalmar2

Martinez - cross

1 THE COURT: That will be done by Mr. Garland.

2 CROSS-EXAMINATION

3 BY MR. GARLAND:

4 Q. Let's focus on the events of September 14th and 15th,
5 2009. On the 14th you said that you were working in District
6 3 in the ICU from around 7 in the morning to around 7 in the
7 evening; is that right?

8 A. Yes.

9 Q. And during that time, sometime in the afternoon on that
10 shift, you began to be responsible for Patient N's care.

11 THE COURT: Could you speak up, Mr. Garland. I'm
12 sorry.

13 MR. GARLAND: Thank you, your Honor.

14 Q. During the afternoon of September 14th, 2009, Patient N
15 was assigned to you; correct?

16 A. She came to the floor.

17 THE COURT: Was she assigned to you; yes or no?

18 THE WITNESS: Yes.

19 THE COURT: Thank you. He's going to ask you a lot of
20 questions that can be answered yes or no. You answer them yes
21 or no. If there's something else that needs to be brought out,
22 your lawyer will bring it out on redirect.

23 MR. GARLAND: Thank you, your Honor.

24 Q. Then at around 5 p.m. on the afternoon of the 14th, you
25 went into the medication room in District 3.

Caalmar2

Martinez - cross

1 A. Yes.

2 Q. You went into the medication room in District 3 at that
3 time to retrieve medication for Patient N.

4 A. Yes.

5 Q. When you went into the medication room in District 3 at
6 that time, you took medication and filled out a form.

7 A. Yes.

8 MR. GARLAND: Your Honor, I'd like to place that form
9 in front of the witness and also to share it with the jury.
10 It's Defendant's Exhibit 13 in evidence.

11 THE COURT: Did I need a speech? No.

12 MR. GARLAND: I just want permission to --

13 THE COURT: You have blanket permission to approach
14 the witness, to show the witness exhibits in evidence, and I
15 believe that you have binders with exhibits in them?

16 MR. GARLAND: Yes.

17 THE COURT: Which Mr. Fullerton should pass out to the
18 jurors.

19 Ladies and gentlemen, the hospital has prepared some
20 binders with exhibits that they will be calling to your
21 attention. As I told you yesterday, we met last week and we
22 went over the objections to the exhibits and got them admitted.
23 We saved time. Now not to leaf through these books. When we
24 want you to open the books and look at a particular exhibit,
25 we'll tell you which ones to look at, all right? And when you

Caalmar2

Martinez - cross

1 go back for breaks, leave these binders on the chairs. Okay?

2 BY MR. GARLAND:

3 Q. Ms. Martinez, I'd like you to turn in the binder that I
4 just left on the witness stand to the tab that says DX13 or 13,
5 for Defendant's Exhibit 13. And in particular, I'd like to ask
6 you to look at the second of the two pages in that exhibit.
7 And let me know when you're there, please.

8 A. I'm there.

9 Q. If you look at the top of that page, in the upper left-hand
10 corner it says St. Barnabas Hospital. Then it has a III, IV,
11 V?

12 A. Yes.

13 Q. And this is the drug disposition record that you made
14 entries in on September 14, 2009?

15 A. Yes.

16 Q. So let's look at your entry then at 5 p.m. on
17 September 14th, and that's what, about -- 1, 2, 3, 4 -- six
18 lines down, under the word Time?

19 A. Yes.

20 Q. And that's your handwriting, 5P?

21 A. Yes.

22 Q. And then if you move over to the right under the heading
23 Room, that's your handwriting, 527A, and that's the room number
24 where Patient N was?

25 A. Yes.

Caalmar2

Martinez - cross

1 Q. Then if you keep moving horizontally to the right, you get
2 to the point where you wrote 3/3?

3 A. Yes.

4 Q. What does that indicate?

5 A. That I took three vials of the 2 milligrams Tubex of
6 Lorazepam and I left three there, because there was six,
7 started out with six count. I took three vials, so there was
8 three left.

9 Q. So you know what medication it is because if you look at
10 the 3/3 and you go straight up, you'll have the name of the
11 medication, Lorazepam -- Lorazepam?

12 A. Yes.

13 Q. And that's also referred to as Ativan?

14 A. Yes.

15 Q. And so it's your testimony that you took three Tubexes of
16 Ativan at 5 p.m.?

17 A. Yes.

18 Q. What's a Tubex?

19 A. It's -- Tubex is the medication -- it's a vial where the
20 medication is. It's a vial of the medication.

21 Q. And you took three of those vials.

22 A. I took three of those vials.

23 Q. And so then you wrote down you took three, and there were
24 how many left after you took three?

25 A. Three left.

Caalmar2

Martinez - cross

1 Q. Then if you continue with the 3/3 going horizontally, when
2 you get to the right, you get to the column where it has the
3 heading RN MD Signature Administered, and then you wrote in
4 your name, in that column?

5 A. The RN, yes.

6 (Continued on next page)

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CAABMAR3

Martinez - cross

1 Q. And then to the right, you print the name of the doctor who
2 had given you the order?

3 A. Yes.

4 Q. Now, let's look at another entry-- well, actually, let me
5 ask you this: In fact, you had taken four tubexes, not three.
6 Correct?

7 A. When the doctor advised me to give one to the resident on
8 call, I went back and the patient was already on her way to
9 radiology.

10 Q. There's no entry on this record, though, that you had taken
11 a fourth. Correct?

12 A. No.

13 Q. You were never disciplined for not recording accurately
14 that you had taken four and not three. Correct?

15 A. You've got to put down --

16 THE COURT: No, no. Yes or no?

17 THE WITNESS: No.

18 THE COURT: You were not disciplined. Okay.

19 Next.

20 Q. Now, let's look at another entry immediately above the one
21 that we just looked at. So we're on the same page, and above
22 your entry, if you go to the left in the time column again, so
23 it's far left, immediately above your entry of 5 p.m., there
24 had been an entry there that you made a change to?

25 A. Yes.

CAABMAR3

Martinez - cross

1 Q. So that entry above yours had originally been made by Cora
2 Fischer?

3 A. Yes.

4 Q. And when you went into the medication room around 5:00, you
5 changed her entry from 6 p.m. to 5 p.m.?

6 A. I corrected it, yes.

7 Q. You changed it.

8 A. I corrected it.

9 THE COURT: Ma'am, did you change it? Yes or no. I
10 don't care if it was a correction or not. Did you change it?

11 THE WITNESS: Yes.

12 THE COURT: Thank you. Answer his question yes or no.

13 THE WITNESS: Yes.

14 THE COURT: Do not fight with him, do not spar with
15 him. Answer the question yes or no.

16 A. Yes.

17 Q. And even though you thought you were correcting the time,
18 you knew it was wrong to change somebody else's entry?

19 A. Yes.

20 Q. Now, let's continue. We'll put this document to the side
21 and continue with the time line on September 14th.

22 So after you took the-- or after you left the
23 medication room in District 3, you went back to the room where
24 Patient N was?

25 A. After I took out the medication from the-- I don't-- repeat

CAABMAR3

Martinez - cross

1 the question. I'm sorry.

2 Q. After you took the medication from the medication room in
3 District 3, you then went back to the room where Patient N was?

4 A. Yes.

5 Q. When you went back to her room, you administered a
6 medication to her?

7 A. Yes.

8 Q. Within the next hour, Patient N then had been transported
9 to radiology for the MRI?

10 A. Yes.

11 Q. And the patient had been returned to the room because the
12 MRI was not done?

13 A. Yes.

14 Q. Then, toward the end of your shift at around 7 p.m. on the
15 14th, AnaRicca Libran made you aware that Morphine was missing
16 from the medication unit in District 3?

17 A. Yes. She made everybody aware, the nurses.

18 Q. So she made all of the nurses in District 3 aware including
19 you?

20 A. Yes.

21 Q. And then, at that point, she told you that she had checked
22 elsewhere to see in the other districts where the medication
23 might have been, the missing Morphine?

24 A. She let-- she let everybody know. It was chaotic.

25 Everybody was looking all over. She made-- she made a general

CAABMAR3

Martinez - cross

1 announcement.

2 Q. To you and the other nurses who you said were Filipino?

3 A. Yes.

4 Q. And then, as that evening moved forward, you, as well as
5 those other nurses, were asked to provide written statements?

6 A. Yes.

7 Q. You did provide a written statement?

8 A. Yes.

9 Q. Let's take a look at it. I'm going to ask to turn in the
10 binder I gave you to Tab 9, Defense Exhibit 9. Let me know
11 when you're there.

12 A. I'm there.

13 Q. Defense Exhibit 9 is the statement that you wrote on the
14 evening of September 14, 2009?

15 A. Yes.

16 Q. And you know that the other nurses on your shift in
17 District 3 were asked to also provide written statements just
18 as you did?

19 A. Yes.

20 Q. And in your written statement, Defense Exhibit 9, you wrote
21 as follows: "On this date, I worked from 8 a.m. to 7:30 p.m.
22 in D-3."

23 A. Yes, that's the shift.

24 Q. You further wrote that, at 7 p.m., as follows, "I was
25 informed by Ms. Ricca Libiran that three tubexes of Morphine

CAABMAR3

Martinez - cross

1 sulfate 2 milligrams was missing."

2 A. Yes.

3 Q. You had said earlier that you administered three tubexes of
4 2 milligrams of Ativan to Patient N.

5 A. Yes.

6 Q. But it's three tubexes of Morphine sulfate 2 milligrams
7 that was missing?

8 A. Yes.

9 Q. And in the same medication room as where you had obtained
10 the three tubexes of 2 milligrams of Ativan, that's where the
11 Morphine sulfate would be kept?

12 A. Yes.

13 Q. Then you went on to write, "Throughout my shift, I
14 administered Percocet and Ativan to my patients. None of the
15 patients assigned to my assignment had an order of Morphine
16 sulfate."

17 A. Yes.

18 Q. So in this statement you're denying that you
19 administered -- accidentally or otherwise -- Morphine to
20 Patient N?

21 A. Yes.

22 Q. Now, after you provided the statement-- well, let me ask it
23 this way: To whom did you give that statement after you wrote
24 it?

25 A. To Ms. Norma Ondoy, the supervisor.

CAABMAR3

Martinez - cross

1 Q. And after you gave the statement to Ms. Ondoy, were you and
2 the other nurses then searched by security?

3 A. Yes.

4 Q. When I say "the other nurses," you and the other nurses who
5 had been working in District 3 on the same shift as you.

6 A. I was searched first and I left. I suppose that everybody
7 else was searched afterwards, because as you were being
8 searched, you were allowed to leave.

9 Q. So after you were searched, you then were allowed to leave?

10 A. Yes. I was first.

11 Q. And then you reported to work the next day on the 15th?

12 A. Yes.

13 Q. And on the 15th, during the course of your shift, you were
14 asked to meet with a number of people investigating what had
15 happened to the Morphine that had gone missing the night
16 before?

17 A. Yes.

18 Q. So you met with Ms. Pauline Frances-Lattery?

19 A. Yes.

20 Q. And what was her position?

21 A. Manager for I.C.U.

22 Q. You also met at the same time with Patricia Byrne?

23 A. Yes.

24 Q. And she was from the pharmacy?

25 A. Yes.

CAABMAR3

Martinez - cross

1 Q. You also met with someone else from the pharmacy. Correct?

2 A. Yes.

3 Q. That was Fran Gatto?

4 A. I guess that's her name. I don't know.

5 Q. Did you know that Fran Gatto had responsibility for
6 narcotics in the pharmacy?

7 A. No.

8 Q. And you also met at the same time with Agnes Lucero?

9 A. Yes.

10 Q. She was the I.C.U. educator?

11 A. Yes.

12 Q. They asked you -- I'm sorry, go ahead.

13 A. I'm sorry. Slash manager for the day in question.

14 Q. They asked you questions about what had happened the day
15 before?

16 A. Yes.

17 Q. You gave them answers?

18 A. Yes.

19 Q. After you gave the answers, you went back to work?

20 A. Yes.

21 Q. Later that day-- well, was it before or after your meeting
22 with them that you saw that Patient N had tested positive for
23 opiates?

24 A. I don't really recall what time it was.

25 Q. But at some point during that day, you learned that on

CAABMAR3

Martinez - cross

1 September 15th, Patient N's urine had been tested and that the
2 report had come back that showed it tested positive for
3 opiates?

4 A. Opiates and benzodiazepine, yes.

5 Q. Both opiates and benzodiazepine.

6 A. Yes.

7 Q. Then, later that day, Pauline Frances-Lattery approached
8 you and asked you to see her with someone from the union?

9 A. Yes.

10 Q. And you asked her what was the purpose?

11 A. I asked her why I needed to have a union present in our
12 meeting.

13 Q. And she said she would explain when you got to the
14 conference room?

15 A. She said I was going to be disciplined.

16 Q. And so if you're going to be disciplined, it's appropriate
17 to have a union representative present?

18 A. That was the policy. Yeah, I guess.

19 Q. By the way, when you were meeting with the four
20 investigators-- Ms. Byrne, Ms. Frances-Lattery, Ms. Gatto and
21 Ms. Lucero -- no one from the union was present for that?

22 A. No.

23 Q. And there was no requirement that anyone from the union be
24 present as part of that investigation, was there?

25 A. I don't know.

CAABMAR3

Martinez - cross

1 Q. So you asked-- going back now on the way to the conference
2 room to see someone from the union as well as Ms. Lattery --
3 what was going on. And even before you had an answer as to
4 what the discipline was, you were saying to her-- you said to
5 her "This must be discrimination"?

6 A. I had had meetings with her. I had meetings with her. So
7 the fact that I was targeted and the fact that I was being
8 asked to go upstairs and nobody else was, I said it was
9 discrimination to her.

10 Q. So at that time you didn't know that Cora Fischer was also
11 being asked to meet with the union and Ms. Lattery, did you?

12 A. No, I didn't know.

13 Q. So you right away jumped to the conclusion that you were
14 being discriminated against?

15 A. I was the only one she asked.

16 Q. In fact, you learned that Ms. Fischer was also asked,
17 didn't you?

18 A. When I got upstairs, I saw Ms. Fischer.

19 Q. And Ms. Fischer, like you, was suspended that day, wasn't
20 she?

21 A. Yes.

22 Q. When you met with Ms. Lattery and she told you why you were
23 being suspended, did you see a document as to why you were
24 being suspended?

25 A. No, that was never shown to me. She just verbally said it

CAABMAR3

Martinez - cross

1 to me.

2 Q. Did you ever see it?

3 A. No, sir.

4 Q. So you're suspended then on September 15th at the end of
5 your shift?

6 A. Yes.

7 Q. And after that day, you didn't reach out and contact
8 anyone-- let me strike that.

9 After that day, you never called Ms. Graham. Correct?

10 A. No, sir.

11 Q. Is what I said correct?

12 Let me ask it this way: After September 15th, 2009,
13 did you ever call Catherine Graham?

14 A. No.

15 Q. Let me ask you now to turn to Exhibit 19 in the Defendant's
16 Exhibits. Let me know when you're there, please.

17 A. I'm there.

18 Q. You spoke earlier about receiving a letter from Ms. Graham
19 on or about October 20, 2009.

20 Is this document, Exhibit 19, that letter?

21 A. Yes.

22 Q. That letter from Ms. Graham says as follows: "Please
23 contact me immediately concerning your employment at
24 St. Barnabas Hospital." Correct?

25 A. Yes.

CAABMAR3

Martinez - cross

1 Q. And it also provided a phone number for you to reach
2 Ms. Graham, didn't it?

3 A. Yes.

4 Q. You didn't call that number, though, did you?

5 A. I called the union organizer.

6 Q. Did you call Ms. Graham?

7 A. No.

8 Q. Now, you also mentioned that you received a letter
9 terminating your employment sometime after you received the
10 October 12th letter. Let me ask you to turn now to Defense
11 Exhibit 20. Let me know when you're there.

12 A. I'm there.

13 Q. That letter, Defense Exhibit 20, is that the letter that
14 you received subsequently notifying you that your employment
15 had been terminated?

16 A. I received it around the same time, yes.

17 Q. My question was: Is that the letter that you received from
18 the hospital notifying you that your employment had been
19 terminated?

20 A. Yes.

21 Q. And that letter is dated October 21, 2009?

22 A. Yes.

23 Q. You received that letter sometime after October 21, 2009?

24 A. Like the day after.

25 Q. The 22nd?

CAABMAR3

Martinez - cross

1 A. Around there, yes.

2 Q. On September 14th, 2009, Patient N was not supposed to
3 receive Morphine, was she?

4 A. No.

5 Q. Making a mistake on a narcotic is a big deal in any
6 hospital, isn't it?

7 A. Yes.

8 MR. GARLAND: I may be done, your Honor. I'll just
9 confer with Mr. Fullerton and see if there's anything else I
10 want to ask.

11 THE COURT: Certainly.

12 MR. GARLAND: Nothing further, your Honor.

13 THE COURT: Any redirect?

14 MR. NUWESRA: No, your Honor.

15 THE COURT: Ma'am, you may step down.

16 THE WITNESS: Thank you, your Honor.

17 (Witness excused)

18 THE COURT: Call your next witness, please.

19 MR. NUWESRA: Plaintiff calls Ms. Fischer.

20 THE COURT: Let's bring in Ms. Fischer.

21 Ma'am, come up here, please.

22 THE DEPUTY CLERK: Please state and spell your name
23 for the record.

24 THE WITNESS: My name is Corazon B. Fischer,
25 C-o-r-a-z-o-n B. F-i-s-c-h-e-r.

CAABMAR3

Martinez - cross

1 THE COURT: You may inquire.

2 CORAZON B. FISCHER,

3 called as a witness by the Plaintiff,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. NUWESRA:

7 Q. Good morning, Ms. Fischer.

8 A. Good morning, sir.

9 Q. As you're aware, my name is Lee Nuwesra. I am the attorney
10 representing Ms. Martinez in this case.

11 How are you doing today?

12 A. I'm fine, sir.

13 Q. Ms. Fischer, would you please tell the jurors what you
14 consider your race to be.

15 A. I came from the Philippines and they call us Orientals or
16 Asians.

17 Q. Would you briefly tell the jurors about your educational
18 background with regard to college and beyond?

19 A. I graduated bachelor's degree in nursing and I came to this
20 country. I'm a registered nurse in New York.

21 Q. And whom are you employed by?

22 A. I'm employed by the St. Barnabas Hospital in the Bronx.

23 Q. And how long have you been employed by St. Barnabas?

24 A. Since 1983 up to the present I'm employed at St. Barnabas,
25 and that will be 29 years.

CAABMAR3

Fischer - direct

1 Q. And have you always been employed in the capacity of a
2 registered nurse at St. Barnabas?

3 A. Yes, sir.

4 Q. What unit at St. Barnabas are you currently assigned to?

5 A. In the intensive care unit of St. Barnabas Hospital.

6 Q. And how long have you been assigned to the intensive care
7 unit at St. Barnabas?

8 A. Since 1985.

9 Q. And can you tell us briefly what your responsibilities and
10 duties have been at St. Barnabas within the I.C.U. unit?

11 A. I'm in intensive care unit at St. Barnabas Hospital and our
12 duties is to treat patients, highly critical patients that are
13 very sick, requiring monitoring. We give medications, we do
14 some dressings, we insert tubes. We-- we make it a point that
15 the well-being of the patients is taken care of in a highly
16 critical specialized unit, sir.

17 Q. What is the policy at St. Barnabas with regard to lab
18 tests?

19 A. Lab tests, sir?

20 Q. Yes.

21 A. We follow orders regarding lab tests, sir.

22 Q. As a registered, nurse, can you take it upon yourself to do
23 any lab tests?

24 A. No, sir.

25 Q. And the orders at St. Barnabas, do they have to be in

CAABMAR3

Fischer - direct

1 writing with regard to lab tests?

2 A. Yes, sir.

3 Q. And is that policy strictly adhered to at St. Barnabas
4 based on your experience?

5 A. Yes, sir.

6 Q. Over the past 27 years or so that you've been at I.C.U.,
7 did there ever come a time where you have taken a urine sample
8 from any of your patients without the written orders of a
9 doctor?

10 A. Yes, sir.

11 Q. How many occasions?

12 A. A couple of times, sir.

13 Q. And have you ever been disciplined for taking urine samples
14 from a patient without the written orders of a doctor?

15 A. No, sir.

16 Q. Are you familiar with Patient N?

17 A. Yes, sir.

18 Q. Okay. So throughout these proceedings, for confidentiality
19 purposes, we're going to be referring to that patient as
20 "Patient N." Okay?

21 A. Okay.

22 Q. How did you become aware of Patient N?

23 A. She was transferred in my care and I received endorsement,
24 verbal report, from the transferring nurse, sir.

25 Q. Do you recall the date?

CAABMAR3

Fischer - direct

1 A. It was October-- I'm sorry. It was September 14th, 2009.

2 Q. Was it --

3 A. Oh, I'm sorry, sir. I'm sorry.

4 Q. It's okay.

5 A. September 15th, 2009.

6 Q. And why do you remember that date so succinctly?

7 A. It's sad to say that I remember it because of all this
8 events.

9 Q. You were suspended on that day. Correct?

10 A. I was not suspended on that date. It was the following day
11 after the September 15th that I was suspended, sir.

12 Q. And how-- how did you get to become suspended? Tell the
13 jurors what happened on September 16th, 2009, that caused you
14 to be suspended.

15 A. It has nothing to do with the patient care. It has
16 something to do with something, a discrepancy with the logging
17 and the writing of a time in the narcotic paper.

18 Q. I see.

19 Can you please take a look at the black booklet in
20 front of you. Do you see that, the black one? I believe it's
21 DX 13. Do you have that?

22 A. Yes.

23 Q. There's two pages.

24 A. Yes.

25 Q. Is this the documentation that you were referring to just

CAABMAR3

Fischer - direct

1 before?

2 A. Yes, sir.

3 Q. Okay. And what was it about the discrepancy of this
4 document that caused you to be suspended?

5 A. I logged in a time and then, when they asked me about it,
6 there was a discrepancy apparently with what Ms. Marlen
7 Martinez said, later on they found out, to what I said when
8 they asked me about it.

9 Q. Okay. And what was it that they told you that Ms. Martinez
10 said?

11 A. They didn't tell me anything about it, sir. It was just
12 found out later on, when the investigation went on on that day,
13 but nothing was told to me. They are just asking me what time
14 did I log it in and who changed the time.

15 Q. Okay. And what time did you tell them you logged in?

16 A. They asked me what time actually you took the medications
17 from the narcotic room. I told them I was there physically
18 about 5:00. "And what time did you log it in?" I told them I
19 logged it in 6:00, sir.

20 Q. Logging it in at 6:00 instead of 5:00--

21 A. Yes.

22 Q. -- when you actually took it was in violation of Bronx
23 Lebanon Hospital's policy. Correct?

24 A. St. Barnabas Hospital.

25 MR. GARLAND: Objection.

CAABMAR3

Fischer - direct

1 THE COURT: I'm sorry, ground for the objection?

2 MR. GARLAND: You have the wrong hospital. She fixed
3 it.

4 THE COURT: Fine.

5 MR. NUWESRA: I'm sorry. Can you please read her
6 answer for my edification?

7 (Record read)

8 Q. So let me ask you again.

9 Logging in 6:00 instead of 5:00, when you actually
10 took it, was in violation of the policy at St. Barnabas
11 Hospital?

12 A. Yes, sir.

13 Q. And you were wrong to do that. Right?

14 A. Yes, sir.

15 Q. And when they initially asked you about it, you lied about
16 that, didn't you?

17 A. I did not lie, sir.

18 Q. So what was the discrepancy?

19 A. That it was 5:00 and I logged in 6:00.

20 Q. So why did you log in 6:00 when it was 5:00?

21 A. I was telling them that I log in the time that the
22 medication was intended to be given.

23 Q. So is it your testimony that the medication you took from
24 D3 at 5:00 wasn't going to be given until 6:00 to your patient?

25 A. Yes, sir. It was intended to be given at 6:00.

CAABMAR3

Fischer - direct

1 Q. Now, Ms. Fischer, where were you assigned on that day?
2 What district?

3 A. I was assigned in I.C.U., the main I.C.U. we call District
4 1.

5 Q. And District 1 has its own medication narcotic box and
6 refrigerator. Right?

7 A. Our own narcotic room, our own narcotics in District 1.

8 Q. And what narcotic did you retrieve at 5:00 from D3, from
9 District 3?

10 A. I took Valium.

11 Q. Valium?

12 A. Yes, sir.

13 Q. Why didn't you retrieve that from D1?

14 A. Because at the time there were no Valium in the narcotic
15 cabinets in D1.

16 Q. Ms. Fischer, that wasn't the only time on that day that you
17 went to D3 and retrieved medication?

18 A. Correct.

19 Q. Can you tell us, based on this document, how many other
20 times you went and you retrieved medication from D3?

21 A. I went-- the first time I went was around 12:00 and I took
22 the same Valium in the narcotic cabinet of District 3.

23 Q. Did you have that Valium at 12 noon in District 1 in your
24 cabinet?

25 A. No, sir.

CAABMAR3

Fischer - direct

1 Q. Can you tell me where the pharmacy is located in relation
2 to D1?

3 A. It is in the same floor, which is in the fifth floor. And
4 you have to go out of the I.C.U. to go to the pharmacy. It's
5 in another-- I don't know how to explain this-- another place.

6 Q. How long would it take a nurse to get from D1 to the
7 pharmacy?

8 A. Let's see. From here?

9 Q. No, from D1.

10 A. No.

11 Q. I'm sorry.

12 A. I'm sorry, I cannot say in a footage place, you know, but I
13 would say from here to past the hallway, to el -- past the
14 elevators.

15 THE COURT: So all the way literally out the door and
16 across the hall?

17 THE WITNESS: Yes, ma'am. Yes, your Honor.

18 THE COURT: A fair distance.

19 THE WITNESS: Yes, a fair distance to walk.

20 Q. Okay. And is there any reason why you didn't ask for the--
21 why you didn't ask the pharmacy to deliver Valium to your unit
22 between noon and 5 p.m. when you went to retrieve such Valium?

23 A. I can't say that I did not. I don't have a recollection.
24 I don't remember. But in my characteristics, I would say that
25 I made or informed them through telephone. But the pharmacy

CAABMAR3

Fischer - direct

1 will pick up whether we call them or not, because they collect
2 the narcotic paper that was counted last night. They pick it
3 up around-- there's no routine -- 8:00, 9:00, 10:00. It
4 depends on their availability to go to the I.C.U.

5 And then it's a protocol or routine that they will see
6 what is missing, what is not missing, and then they will also
7 deliver them. There is no pattern when will they deliver them.
8 They will just come and whoever is available to receive the
9 narcotic, that will be the person to sign who received the
10 narcotic. So there will be any-- any information, whether the
11 medication delivered will be known or will be informed to the
12 nurses in the unit at that time.

13 Q. Was the practice at the time that deliveries are usually
14 done at 12 noon to the different-- the vary-- the different
15 units?

16 A. There is no pattern, sir.

17 Q. There is no pattern?

18 A. No, sir.

19 Q. Where did you keep the Valium that you received at 5:00 for
20 an hour before you gave it to your patient?

21 A. I cannot say that I kept it for an hour in my pocket. I
22 took it from the pharmacy-- I took it from the narcotic
23 cabinet. I have it in my hand, I put it in my pocket. And
24 it's allowed that we give narcotic medications an hour before,
25 an hour after. So since I took it at 5:00, I could have given

CAABMAR3

Fischer - direct

1 it 5:15, 5:30, but it's intended to be given at 6 p.m.

2 We have a medication paper that's like a log-in. Q6
3 hours means every six hours: 6 a.m., 12 noon, 6 p.m., 12
4 midnight. There are boxes there and then, if you are intending
5 to give it at 6 p.m., there's a date. You sign it on that
6 certain box.

7 It's allowed, you can give it ahead of time or an hour
8 after. You don't have to put on the box at 6 p.m. You don't
9 have to put 5:15, 5:20 or whatever. It's understandable that
10 you gave it at the intended time of 6 p.m., 12 p.m., 2 p.m.,
11 sir. So if I took it at 5 p.m. and I gave it at 5:30, I gave
12 it at 5:15, I gave it within the span of time of 5 p.m. to 6
13 p.m. or 6 p.m. delayed.

14 I cannot recall what time I really gave it. I gave it
15 in the span of time. I took it from the narcotic cabinet --

16 THE COURT: Okay. Enough. You've answered his
17 question.

18 Next, please.

19 THE WITNESS: I'm sorry.

20 THE COURT: Just limit yourself to answering what he
21 asks you.

22 THE WITNESS: I'm sorry, your Honor.

23 Q. All right. So wouldn't there be a conflict as far as
24 documentation if in the patient's chart you show that you gave
25 it at 5:15, yet on this DX 13, you would show that you gave it

CAABMAR3

Fischer - direct

1 at 6:00?

2 A. It's allowed to give it, sir.

3 Q. I see.

4 Now, ma'am, would it be fair to state that one of the
5 two times that you took a specimen of urine of a patient
6 without a specific written order of a doctor was on the 15th of
7 September, 2009, concerning Patient N?

8 A. I took the urine with a verbal order, sir.

9 Q. Right. But there was nothing in writing in the patient's
10 chart regarding the toxicology of her urine?

11 A. Not at that time, sir.

12 Q. And can you tell the jurors, when did you start taking care
13 of Patient N on the 15th of September, 2009?

14 A. I believe around 9 a.m. in the morning, sir.

15 Q. Incidentally, on 9/15/2009, what time did-- what shift did
16 you work?

17 A. From 7-- day shift, sir.

18 Q. Right. And what hours?

19 A. From 7:00 until 7:30, sir.

20 Q. Three days a week?

21 A. Three days a week, sir.

22 Q. And how long after you started your shift did you take care
23 of Patient N?

24 A. Since she-- since she was transferred in the intensive
25 care, around the time of 9:00, sir.

CAABMAR3

Fischer - direct

1 Q. Okay. And how long after she was transferred to your unit
2 in D1 did you take the urine sample from Patient N to send for
3 a toxicology report?

4 A. Around the time, sir, the 9:00, 9:30. Around that time,
5 sir.

6 Q. Okay. Can you just tell the jurors, based upon your
7 experiences, what is involved in taking the urine and then
8 sending it? What's the process?

9 A. We collect the urine from a Foley bag. A Foley bag is a
10 bag with a tube and a catheter that is inserted into a
11 patient's urethra that it collects where the urine passes
12 through to this catheter, to the tube, to the collection bag.

13 And if an order, a verbal order written is made, we
14 collect the urine. We have a container. We get it from the
15 Foley bag, because there is a draining system there. We
16 collect it and it drips to the collecting container. We seal
17 it, we put the label. We have a paper that we use. It's a
18 request form. We check or we write whatever is requested or
19 ordered by the doctor. Fold that paper. We check the label of
20 the patient and the label-- all the labeling is correct. Fold
21 it, put it in a plastic bag, put it in the collecting basket.
22 And the collecting basket, it will stay there and a transporter
23 or an attendant will pick it up and transport it to the
24 laboratory.

25 Q. Okay. And how long does that whole process take?

CAABMAR3

Fischer - direct

1 A. Repeat the question, sir.

2 Q. How long does that whole process that you just mentioned
3 take?

4 A. The collecting of the urine will take me only, like,
5 minutes.

6 Q. Okay. And filling out the paperwork?

7 A. Very fast, sir. Minutes, also.

8 Q. Okay. Thank you.

9 Do you know why Patient N was transferred to your unit
10 to be under your care?

11 A. She was getting unstable, means getting sicker, worsening
12 condition. That's why she was transferred to District 1,
13 intensive care.

14 Q. Did the hospital suspect her of having meningitis and they
15 sent her for isolation to your unit at the time?

16 A. Yes, sir.

17 Q. Now, ma'am, can you tell me how long of a suspension did
18 you serve when you were suspended on the 16th of September,
19 2009?

20 A. I believe three days.

21 Q. Three days?

22 A. I don't remember that much, but I know it was three days.

23 Q. Okay. Can you tell me, how did you learn that you were
24 going back to work after three days?

25 A. I was told, sir.

CAABMAR3

Fischer - direct

1 Q. Who told you?

2 A. I don't clearly remember, but I received a call from -- I
3 believe it was Ms. Lisa Greene, sir.

4 Q. And Ms. Lisa Greene is your union representative. Right?

5 A. Yes.

6 Q. And she's the one that was grieving your case at the time?

7 A. Presenting my case, sir.

8 Q. Presenting your case on your behalf?

9 A. Yes.

10 Q. So she called you up within three days and told you you
11 could go back to work. Right?

12 A. I believe so.

13 Q. Okay. Did anybody else from the union contact you to tell
14 you you could go back to work besides Ms. Lisa Greene?

15 A. No, sir.

16 Q. Did you have to sign any papers when you went back to work?

17 A. I don't recall, sir.

18 Q. All right. Are you familiar with the different narcotics
19 that are known as opiates as a trained R.N.?

20 A. I know opiates. They are like Morphine, hydromorphone.
21 That's how I know opiates.

22 Q. Are you trained in recognizing the side effects of opiates?

23 A. We are educated, informed what we expect of them.

24 Q. All right. Is your answer yes?

25 A. Yes, sir.

CAABMAR3

Fischer - direct

1 Q. Okay. And are you trained to recognize the side effects of
2 what's known as benzodiazepine?

3 A. Yes, sir.

4 Q. Do you know what that is?

5 A. Yes, sir.

6 Q. What is that?

7 A. That's Valium, sir.

8 Q. Okay. Would Morphine be considered an opiate? Morphine.

9 A. Yes, sir.

10 Q. Do you know whether restlessness is a side effect of
11 Morphine?

12 A. It could be, sir. It is.

13 Q. And do you know-- are you familiar with the drug known as
14 Ativan?

15 A. Yes, sir.

16 Q. Would restlessness be a side effect of Ativan?

17 A. It could be, sir, also.

18 Q. Is one of the side effects of Morphine low blood pressure?

19 A. Yes, sir.

20 Q. Is one of the side effects of Ativan low blood pressure?

21 A. It could be, sir.

22 Q. Incidentally, with regard to the investigation as far as
23 the discrepancy or the conflict of the time, I just want to
24 bring your attention back to Exhibit DX 13.

25 A. Yes.

CAABMAR3

Fischer - direct

1 Q. Did there ever come a time where you became aware that it
2 was my client who corrected the time for that entry from 6:00,
3 what she wrote, to 5:00?

4 A. No, sir, until she-- not until she told me after the
5 investigation.

6 Q. Okay. But was it correct that when she corrected from six
7 to five, that that was the correct time when you took that
8 medicine out of that cabinet?

9 A. Yes.

10 Q. And isn't it also a fact that she received the keys to go
11 and retrieve her own medication around 5:00 from you?

12 A. Yes, sir.

13 Q. And did she give you back the keys when she finished with
14 them?

15 A. No, sir.

16 Q. Do you know who she gave them to?

17 A. I don't know.

18 Q. And how far is D1 in relation to D3, distancewise?

19 A. From here-- from here to those desks over there, sir.

20 THE COURT: I don't know what you mean. From the jury
21 box to what desks over where?

22 THE WITNESS: Where the gentleman is at the back.

23 THE COURT: The very back of the courtroom?

24 THE WITNESS: Yes, ma'am. Yeah.

25 THE COURT: Okay. So basically the length of this

CAABMAR3

Fischer - direct

1 courtroom, from where you're sitting to the back of the
2 courtroom?

3 THE WITNESS: Yeah. Maybe a little bit nearer, too.

4 A. I'm sorry, sir, maybe a little bit more nearer. I'm sorry
5 about that. I'm not-- I should have measured it.

6 Q. How many rooms are there in D1?

7 A. Ten rooms, sir.

8 Q. And how many rooms are there in D3?

9 A. Three rooms, sir.

10 Q. And is D2 between D1 and D3?

11 A. No, sir. Excuse me, sir.

12 THE COURT: No, no. You've answered the question.

13 A. I did not understand it well. Can you repeat the question?

14 THE COURT: Would you repeat your last question,
15 please?

16 MR. NUWESRA: Sure.

17 Q. You have three districts in the I.C.U. unit?

18 A. Yes, sir.

19 Q. And my question to you, is District 2 between District 1
20 and District 3?

21 A. Correct, sir. Yes.

22 Q. Okay. And how many rooms does District 2 have?

23 A. Three rooms, sir.

24 Q. So there is a total of about 15 rooms? There is a total of
25 about 15 or 16 rooms?

CAABMAR3

Fischer - direct

- 1 A. In what area, sir?
- 2 Q. In all of them, one, two and three.
- 3 A. Thirteen rooms if we are talking about District 1 and
- 4 District 2.
- 5 Q. Okay. And how many in District 3?
- 6 A. We have ten rooms.
- 7 Q. So there is about 23 in total?
- 8 A. We have ten rooms in District 3, three rooms in District 2,
- 9 ten rooms in District 1.
- 10 Q. Twenty-three rooms. Okay.
- 11 Are you familiar with the term "flagging" on a chart?
- 12 A. Yes, sir.
- 13 Q. What's flagging?
- 14 A. Flagging the chart, it is a small, like, device. You
- 15 rotate that. It will give you a color. If it's red, there's
- 16 an order. By color coding, it will tell us if it's a stat,
- 17 which means emergency. You take a look at it, the color. Or
- 18 means an attention. That is flagging, sir.
- 19 Q. Okay. And what's the purpose of that?
- 20 A. To alert the staff, the nurses, to know that there's an
- 21 order in the chart.
- 22 Q. And when you say "an order," you're referring to the orders
- 23 the physicians put in writing in the chart. Right?
- 24 A. Yes.
- 25 Q. Such as lab orders?

CAABMAR3

Fischer - direct

- 1 A. Yes.
- 2 Q. When you collected the urine of Patient N, was there any
3 flagging on the chart?
- 4 A. It was a verbal order, sir.
- 5 Q. Just answer my question. Was there any flagging on the
6 chart?
- 7 A. I don't know, sir.
- 8 Q. Are you familiar with the term "stat" at your hospital?
- 9 A. Yes, sir.
- 10 Q. What does that mean?
- 11 A. Right now.
- 12 Q. Emergency?
- 13 A. Yes, sir.
- 14 Q. And what's the significance of that?
- 15 A. Emergency means an emergency attention.
- 16 Q. Okay.
- 17 A. Stat means do it right now.
- 18 Q. Okay. And that goes for written orders as well?
- 19 A. Written orders and verbal orders, yes, sir.
- 20 Q. Was there any written stat on Patient N's chart, medical
21 chart, when you took the urine sample for the toxicology report
22 of that day?
- 23 A. I don't remember, sir.
- 24 Q. Who writes "stat"?
- 25 A. The doctors, sir.

CAABMAR3

Fischer - direct

1 Q. Can you take an order, verbal or otherwise, from just
2 another registered nurse regarding lab test?

3 A. Yes, sir.

4 Q. You can?

5 A. Yes, sir.

6 Q. Can you tell me the circumstances in which you would do
7 that?

8 A. The circumstances says that the doctor also told this
9 staff, who is a member of the team, we work as a team, it's
10 acceptable.

11 Q. I see.

12 And that was your training?

13 A. Yes, sir.

14 Q. And so if a doctor tells you to have another registered
15 nurse take a urine sample and send it to the lab, that
16 registered nurse should listen to you and do it?

17 A. Repeat the question, sir.

18 Q. Sure.

19 If a nurse comes to you and tells you verbally that a
20 doctor told her to tell you to take a urine sample for a
21 toxicology report, do you have to do that?

22 A. In the event of my patient's case, yes, sir, we did it.

23 THE COURT: The question is, under the hospital rules,
24 do you have to do that? Do you have to take that order from
25 the nurse?

1 THE WITNESS: Yes, sir. Yes, your Honor.

2 THE COURT: Okay. Next question.

3 Q. Okay. And that's a written rule?

4 A. I don't-- I'm not very sure, sir, whether it's a written
5 rule or not, no.

6 Q. Were you ever disciplined for doing that?

7 A. No, sir.

8 Q. Incidentally, who was it that related to you that you
9 should take a sample of Patient N's urine and send it to the
10 lab at around 9:00 in the morning of September 15th, 2009?

11 A. She was a registered nurse who was also working in the
12 I.C.U. at the time.

13 Q. Okay. Can you give us her name?

14 A. Her name is Agnes Lucero.

15 Q. Thank you.

16 Can you tell us who was the attending physician on
17 that day on your floor?

18 A. He was Dr. Darryl Adler.

19 Q. Okay. And how do you know that Dr. Adler was the attending
20 physician on that floor on that day, the 15th of September,
21 2009?

22 A. He was assigned in the intensive care. I saw him earlier,
23 before that, and I know that he was the assigned attending.

24 Q. How many attending physicians are assigned to a district in
25 a given day?

CAABMAR3

Fischer - direct

1 A. One.

2 Q. One and only one. Right?

3 A. In a certain district, yes.

4 Q. And would a patient's chart indicate to you, if you were to
5 review it, as to whom the attending physician was in District 1
6 in the morning of 9/15/2009?

7 A. Repeat the question, sir.

8 Q. Sure.

9 If I was to show you a patient's chart for 9/15/2009
10 for District 1 that took care of Patient N on that date, will
11 you be able to tell who was the attending physician during that
12 shift?

13 A. Yes.

14 MR. NUWESRA: May I approach the witness, your Honor?

15 THE COURT: Yes.

16 Q. Take a look at this chart and let me know who was the
17 attending physician on the 15th of September. Please take a
18 look at that chart and tell me who was the attending physician
19 on 9/15/2009 responsible for Patient N in D1.

20 MR. GARLAND: Excuse me. Could we just get an exhibit
21 number?

22 MR. NUWESRA: It's the medical chart. It would have
23 been 16 in 1, Exhibit 1.

24 MR. GARLAND: I just wanted to confirm that we were on
25 the same page.

CAABMAR3

Fischer - direct

1 A. Yes, sir.

2 Q. Who was the attending physician on that day?

3 A. It's signed here Annie Montilla (ph), Doctor of
4 Osteopathic.

5 Q. That's not Dr. Adler. Right?

6 A. No, sir.

7 Q. Thank you.

8 MR. NUWESRA: I have no other questions of this
9 witness at this time, your Honor.

10 THE COURT: Cross-examination, please.

11 MR. GARLAND: Thank you, your Honor.

12 CROSS-EXAMINATION

13 BY MR. GARLAND:

14 Q. Ms. Fischer, on the 14th of September, you were assigned to
15 District 1?

16 A. Yes.

17 Q. Later, during your shift, you became aware that there was
18 Morphine missing from the District 3 medication cabinet?

19 A. Yes.

20 Q. You became aware of that because Anna Libiran brought it to
21 your attention?

22 A. Yes, sir.

23 Q. Following that being brought to your attention by Anna
24 Libiran, were you asked to prepare a statement that evening?

25 A. Repeat the question, sir.

CAABMAR3

Fischer - cross

1 Q. Were you asked to provide a statement, written statement,
2 that evening regarding the missing Morphine?

3 A. Yes, sir.

4 Q. I'm going to ask you in the binder to turn to Defense
5 Exhibit 29. It's a black binder that looks like this. So if
6 you would turn to the tab in that book that has the number 29
7 on it and let me know when you get there, please.

8 Are you there now?

9 A. (Indicating.)

10 Q. Yes?

11 A. Yes.

12 (Continued on next page)

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Caalmar4

Fischer - cross

1 BY MR. GARLAND:

2 Q. And is that document a copy of the written statement that
3 you prepared on the evening of September 14, 2009?

4 A. Yes, sir.

5 Q. This is in your handwriting. Would you just please read it
6 for the jury.

7 A. "To Whom it May Concern. This letter is in reference to
8 the missing three Tubex of 2-milligram morphine sulfate. At
9 7 p.m. of September 14, 2009 we were told by District 3 nurses
10 Ms. Ricca Libiran, Ms. Cleo DeJesus, Ms. Marlen Martinez, and
11 Ms. Othilyn Gonzalez that there were three Tubex of
12 2 milligrams morphine sulfate missing. Found at 7 p.m. on same
13 date by Ms. Ricca Libiran. Since I had an access to the
14 District 3 narcotics keys on this date, I was asked to make
15 this report."

16 Q. Now you referenced some people in this statement. Let's
17 just go through them.

18 Ms. Cleo DeJesus, was she a nurse in District 3 on the
19 day shift on September 14?

20 A. Yes.

21 Q. Marlen Martinez, was she a nurse working in District 3 on
22 September 14?

23 A. Yes, sir.

24 Q. Ms. Gonzalez, was she a nurse working in District 3 on
25 September 14?

Caalmar4

Fischer - cross

1 A. Yes, sir.

2 Q. Ms. Libiran, was she a nurse working in District 3 on
3 September 14?

4 A. Yes, sir.

5 Q. And when you wrote in this statement that there were
6 2 milligrams morphine sulfate missing found at 7 p.m. on same
7 date by Ms. Ricca Libiran, did you mean that she discovered at
8 7 p.m. that there were three Tubexes of morphine sulfate
9 missing?

10 A. I don't know what time she discovered it, sir. We were
11 told at 7 p.m.

12 Q. So you were told that there was morphine sulfate missing at
13 around 7 p.m. on the evening of September 14th?

14 A. Yes.

15 Q. And following being told and following preparing this
16 written statement, were you searched by security before you
17 could leave that evening?

18 A. Yes.

19 Q. Then you came back in to work on the following day,
20 September 15th, 2009 and you were assigned to District 2?

21 A. 1.

22 Q. Assigned to District 1 on the 15th; correct?

23 A. Yes, sir.

24 Q. And during the course of that shift were you called into a
25 meeting to meet with different people investigating what had

Caalmar4

Fischer - cross

1 happened with the missing morphine?

2 A. It was not about the missing morphine, sir.

3 Q. Were you called into a meeting with Pauline Frances-Lattery
4 during your shift on the 15th?

5 A. Yes, sir.

6 Q. And in that meeting was someone from the pharmacy also
7 there?

8 A. Yes, sir.

9 Q. And was Agnes Lucero there; do you remember?

10 A. Yes, sir.

11 Q. Was there a fourth person there as well; do you remember?

12 A. Yes, sir.

13 Q. And when you were called into that meeting, did those
14 individuals ask you questions?

15 A. Yes, sir.

16 Q. And you answered their questions.

17 A. Yes, sir.

18 Q. And after you answered their questions, you left and you
19 went back to work on the 15th.

20 A. Yes, sir.

21 Q. Later in the day, toward the end of your shift, you were
22 called up to meet with Pauline Frances-Lattery?

23 A. Yes, sir.

24 Q. And you learned at that time that your employment was being
25 suspended indefinitely pending investigation.

Caalmar4

Fischer - redirect

1 A. Yes, sir.

2 MR. GARLAND: One moment, your Honor.

3 THE COURT: Mm-hmm.

4 (Pause)

5 MR. GARLAND: No further questions, your Honor.

6 MR. NUWESRA: Just one or two, your Honor, real quick.

7 REDIRECT EXAMINATION

8 BY MR. NUWESRA:

9 Q. Ms. Fischer, what time was this meeting on 9/15/09 that you
10 had with Ms. Lattery, Ms. Byrne, and the other individual?
11 What time was it?

12 A. I don't remember, but it would be before lunch.

13 Q. Before lunch.

14 A. Yes.

15 Q. And you were allowed to continue working until the end of
16 your shift before you were suspended the next day; correct?

17 A. Yes.

18 Q. And did they give you more than one reason -- when you were
19 suspended, did they give you more than one reason for your
20 suspension or did they only give you one reason?

21 A. I don't really remember anymore.

22 MR. NUWESRA: Okay. Thank you. I have no other
23 questions, your Honor.

24 THE COURT: Okay. Anything else for this witness?

25 MR. GARLAND: No, your Honor.

Caalmar4

1 THE COURT: Okay. Ma'am, you may step down.

2 (Witness excused)

3 THE COURT: Who is your next witness, please?

4 MR. NUWESRA: Call her?

5 THE COURT: Who is the next witness?

6 MR. NUWESRA: Ms. Libiran.

7 THE COURT: Ms. Libiran.

8 I'll tell you what, folks. Let's take a lunch break
9 now and be back here at ten of 2, all right? At ten of 2 we'll
10 resume. Don't discuss the case over lunch. Keep an open mind.

11 (Jury excused)

12 THE COURT: Okay. So I'll see you at ten of 2.

13 MR. NUWESRA: Thank you.

14 MR. GARLAND: Thank you, your Honor.

15 (Luncheon recess)

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Caalmar4

Libiran-Danao - direct

1 AFTERNOON SESSION

2 2:02 p.m.

3 (In open court; jury present)

4 MR. NUWESRA: Good afternoon, your Honor. Plaintiff
5 calls Ms. Libiran-Danao.6 THE COURT: Ma'am, would you please stand up, raise
7 your right hand.

8 (Witness sworn)

9 THE CLERK: Please state and spell your name for the
10 record. Thank you.11 THE COURT: Go ahead. Tell us your name. Put your
12 hand down.13 THE WITNESS: Okay. My name is AnaRicca
14 Libiran-Danao. A-N-A-R-I-C-C-A, Libiran, L-I-B-I-R-A-N, hyphen
15 D-A-N-A-O.16 THE COURT: You may have a seat, ma'am. And you're
17 going to talk to these people, so use the microphone.

18 THE WITNESS: Sure.

19 THE COURT: Thank you.

20 ANARICCA LIBIRAN-DANAO,

21 called as a witness by the Plaintiff,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. NUWESRA:

25 Q. Good afternoon, your Honor. Good afternoon, Ms. Danao.

Caalmar4

Libiran-Danao - direct

1 How are you today?

2 A. I'm good. Thank you.

3 Q. As you know, I'm Lee Nuwesra representing Ms. Martinez in
4 this case.

5 Ma'am, would you kindly tell the jurors what you
6 consider your race to be.

7 A. I'm Filipino.

8 Q. And would you kindly tell the jurors your educational
9 background, starting with college.

10 A. Okay. I graduated college in the Philippines, bachelor of
11 nursing, in Chinese General Hospital. I graduated 1992.

12 And then I came -- I worked as a medical
13 representative back home.

14 And then in 2000 I went here, take my boards and
15 passed -- and got -- passed my boards, board exams in 2003, and
16 St. Barnabas sponsored me as an immigrant.

17 And then in 2011 I finished my master's in nursing
18 administration.

19 Q. Thank you. The master's degree that you attained in 2011,
20 how was it paid for?

21 A. It was paid as a benefit, one of the benefits of the
22 hospital, through our union, 1199, so it's a collaboration with
23 St. Barnabas and 1199.

24 Q. Okay. Can you tell us whom you're currently employed by.

25 A. I'm employed by St. Barnabas Hospital.

Caalmar4

Libiran-Danao - direct

1 Q. And in what position?

2 A. As a registered nurse.

3 Q. And you mentioned earlier that in '03 you joined them;
4 correct?

5 A. Correct.

6 Q. All right. Would it be fair to state that you continued to
7 work for St. Barnabas from '03 to date?

8 A. Correct, yes.

9 Q. Have your duties or responsibilities changed since '03
10 while working at St. Barnabas Hospital?

11 A. As a registered nurse, it's basically treating the patient
12 needs and also the patient's condition, but in 2005 I was --
13 from medical surgical floor initially, I -- I transferred -- I
14 applied for a critical care training, and that's in 2005 I
15 worked in intensive care unit.

16 Q. And who did you apply through? Who did you ask to be
17 transferred?

18 A. 'Cause if -- if there's a training for critical care, you
19 write a request to the director of nursing that -- your
20 intention to -- to be trained as a critical care nurse.

21 Q. And who is that director of nursing?

22 A. Back then I wrote for my manager, which is Ms. Brown, and
23 to Miss Cathy Graham is the director of nursing back then.

24 Q. Is she no longer the director of nursing?

25 A. Today, no.

Caalmar4

Libiran-Danao - direct

1 Q. And what is her -- what does -- does Ms. Graham still work
2 for St. Barnabas?

3 A. Yes.

4 Q. And what position does she hold?

5 A. I'm not so sure.

6 Q. Is she involved in any way with nursing?

7 A. No.

8 Q. Do you know when she stopped to be involved with nursing?

9 A. I don't really know the exact date of when she was
10 transferred to a different department.

11 Q. Would that department be housekeeping?

12 A. It -- I think it's one of it. Like I'm not so sure, but
13 I -- what I know, handling pharmacy, housekeeping, rehab, food
14 and nutrition. It's a lot of departments.

15 Q. And who replaced her?

16 A. Ms. Richardson, Denise Richardson.

17 Q. Now can you tell us how your duties and responsibilities
18 changed after you received the -- or at least after your
19 request was honored to transfer to the ICU.

20 A. Critical care is very, very challenging work area. It's
21 basically you're treating the most sickest patients in the
22 hospital. We take care -- in our -- in St. Barnabas intensive
23 care unit, we take care of the -- not just, unlike different
24 hospital, they have like neurosurgical, but in our critical
25 care, it's basically general, from a simple critical sickness

Caalmar4

Libiran-Danao - direct

1 to a really trauma, because our hospital is considered to be a
2 trauma hospital.

3 Q. Since joining ICU and before attaining your master's
4 degree, did there ever come a time where you served in a
5 capacity of a charge nurse?

6 A. In critical care area, yes.

7 Q. Can you tell the jurors the significance of being a charge
8 nurse.

9 A. Well, as a charge nurse, you have the responsibility of --
10 it's like running the unit for the day. You assign your
11 coworkers certain responsibility, like to -- to do the
12 medication cart, to check the narcotic count. You also assign
13 them from -- from the nursing staff to the auxiliary staff,
14 their responsibility, their break times from the morning to the
15 night, from the clerk. You basically designate the work for
16 the day around the people that on duty that day.

17 Q. Would it be fair to state that being a charge nurse is a
18 form of leadership position within the unit?

19 A. It's not a leadership because basically you -- in our case,
20 in St. Barnabas, we have the tracking sheets where you would
21 take as a charge nurse, from senior to least senior. So of
22 course if the senior around, they are the one who will take the
23 charge -- charge nurse. So in -- it's like, well, leadership
24 in such a way you practice your -- yourself to be -- you're in
25 the area, like you're handling everybody, you're in command of

Caalmar4

Libiran-Danao - direct

1 everything, you're in control of the unit for that day.

2 Q. And do you get any other benefits with the job besides what
3 you just testified about? Let me ask it this way. Do you get
4 extra pay for that?

5 A. Yes.

6 Q. Thank you. And this extra pay, is it per shift, per week,
7 how is it -- is that per shift?

8 A. It's -- yeah. When -- when you're in charge, you get 23
9 bucks.

10 Q. And you mentioned the word "auxiliary." What does that
11 mean for us laypeople?

12 A. Auxiliary is housekeeping, the physical therapy, the --
13 even the pharmacy. If there's a problem, then you need to talk
14 to these people, like if you have problem with -- if one of the
15 staff has a concern, you need to speak like not just with
16 auxiliary staff, with the family members as well before you
17 push the problem up to your manager or your supervisor.

18 Q. And I believe you mentioned that there was a rotation for
19 the charge nurses at St. Barnabas. How long has this rotation
20 been in effect?

21 A. I really don't know, but when I came in 2005, it's been --
22 it's been there.

23 Q. And when you said it's based on seniority, is that
24 seniority within the unit?

25 A. Yes, correct.

Caalmar4

Libiran-Danao - direct

1 Q. Are you familiar with the policy regarding getting lab
2 testing done at St. Barnabas?

3 A. You mean lab testing? Laboratory?

4 Q. I'm sorry?

5 A. Laboratory?

6 Q. Laboratory. I'm sorry, yes. Are you familiar with the
7 policy at St. Barnabas?

8 A. The doctor needs an orders for it before you send the
9 specimen.

10 Q. And does this doctor order have to be in writing?

11 A. Yes.

12 Q. And violate -- violating this -- how seriously does St.
13 Barnabas take the violation of such policy?

14 A. I'm not so sure about that.

15 Q. Have you ever done any lab testing or sent any lab --
16 anything to the labs for testing without a written order from a
17 doctor?

18 A. No.

19 Q. You said one of the things you -- as a charge nurse you
20 would be in charge of is the medication cart. Do you recall
21 that?

22 A. Yes.

23 Q. What's a medication cart? What is it?

24 A. It's -- because we use the manual medication dispensing so
25 we have these carts that has the -- with specific bins for each

Caalmar4

Libiran-Danao - direct

1 patient. That's where the pharmacies replenish it every --
2 every shift. So they change it every shift and then for each
3 patient and then there's -- what you need, you push it near the
4 bedside and that's where you give the medication, coinciding
5 with their identity and the medication that you give, and the
6 orders of the doctor. Glass is there, medication cups is
7 there, garbage is nearby, and sharp containers are also nearby.

8 Q. I'm sorry. What's the last thing you mentioned?

9 A. Sharp containers, like to throw the syringe. It comes in a
10 sharp container, not in the regular garbage.

11 Q. What was the other thing you said before that?

12 A. The regular garbage.

13 Q. And what is the sharp container? What does it facilitate?

14 A. It's a red container, garbage container that is being
15 changed by not housekeeping, from outside company, I believe,
16 and this is -- they throw -- 'cause it needs to be thrown in a
17 controlled manner because all the syringes, the sharps are
18 there so -- and then some narcotics we put in there -- not
19 some. The narcotics should be put in there because these are
20 the controlled substances.

21 Q. Would these disposed of narcotics, would they include
22 morphine?

23 A. Yes.

24 Q. Would they include Ativan?

25 A. Yes.

Caalmar4

Libiran-Danao - direct

1 Q. What is the policy of the hospital with regard to not
2 abiding by that policy where you have to put such syringes and
3 controlled substances in that sharps container, sharp
4 container?

5 A. I'm not sure really.

6 Q. Did you ever during your tenure dispose of morphine
7 wrappers in somewhere else besides the sharps container?

8 A. I believe I -- I didn't do it. Maybe if I just leave it
9 like when I give medication to the patient, I -- I withdraw the
10 medication from the Tubex and then give the patient and then
11 when I come back there, I should have throwed it to the sharp,
12 but of course you don't know who's in there might throw it
13 somewhere like in the regular garbage or in the -- 'cause you
14 need to give the medication to the patient, and the empty vials
15 or wrappers or -- should be in the medication cart. So I
16 cannot control who's going to throw it out and whatnot.

17 Q. I see. Are you in complete control as a charge nurse of
18 the medication cart for that shift?

19 A. If I'm a charge nurse, I assign it to somebody else, and
20 they should be in control of their assignment.

21 Q. Have you worked in all three districts of the ICU during
22 your tenure there?

23 A. Yes.

24 Q. Did there ever come a time where -- withdrawn.

25 Did there ever come a time where you worked in the

Caalmar4

Libiran-Danao - direct

1 emergency room?

2 A. Yes. I floated -- I float some other times in emergency
3 room.

4 Q. Is the work in the emergency room different than that in
5 the ICU?

6 A. Completely different.

7 Q. How is it different?

8 A. Because in ICU, you have designated patients like for the
9 whole shift. In emergency room, your patient comes and go. If
10 you have like 20 patient for the day might be in emergency
11 room. Depends how busy the emergency room is. Unlike in ICU
12 you have like -- for the shift, you have maximum five patients,
13 or two patients, and then patients will be transferred. It's
14 either admit or not. So it's like you have a definite patient
15 for the whole shift.

16 Q. I want to bring your attention to the time period of 2009.
17 Are you familiar with a nurse by the name of Lori Verzonilla?

18 A. Yes.

19 Q. Did there ever come a time in 2009 that you worked along
20 with her?

21 A. Yes.

22 Q. And was it in the emergency room?

23 A. No. She worked in ICU night shift.

24 Q. Night shift. Speaking of shifts, have you -- have you
25 worked various shifts since you joined the ICU?

Caalmar4

Libiran-Danao - direct

1 A. The first eight months of my career in ICU, like eight
2 months, yeah, I worked night shift, and then I requested for a
3 day shift.

4 Q. And who did you make that request from? Who did you make
5 that request to?

6 A. From my manager.

7 Q. Who was that?

8 A. Ms. Pauline Frances-Lattery.

9 Q. Who is the night shift manager?

10 A. No. She is the --

11 Q. No. My question is: Who is the night shift manager?

12 A. None.

13 Q. Is there an evening shift manager?

14 A. None.

15 Q. There is not?

16 A. None.

17 Q. Are you familiar with Ms. Ondoy?

18 A. She is the supervisor, not the manager.

19 Q. I see.

20 A. ICU has one manager but different supervisors, different
21 shifts.

22 Q. And what shift does Ms. Lattery work at?

23 A. Oh, she comes mornings, sometimes nighttime. Depends on
24 the needs of the unit, 'cause she takes -- take look the whole
25 unit as a manager.

Caalmar4

Libiran-Danao - direct

1 Q. Okay. And what was the process that you have to go through
2 to switch from night to day?

3 A. You file for your request, which I did when I was like
4 applying for my critical -- like after my critical care
5 training, because of the family issues.

6 Q. Okay. And when working with Ms. Verzonilla -- and I want
7 to get your attention -- limit your attention to 2009 -- did
8 there ever come a time where she had to give a service talk?
9 Do you know what a service talk is?

10 A. In-service, you mean?

11 Q. In-service. Sorry. In-service.

12 A. In-service? No.

13 Q. You don't remember ever having to attend one of her
14 in-services?

15 A. I heard of it, but she never did it to me.

16 Q. How did you hear about it?

17 A. Because I was from vacation, 'cause I came -- I went to the
18 Philippines because I bring my sick dad back home, and then
19 when I come back September, I heard about it.

20 Q. This is '09?

21 A. Yes.

22 Q. And whom did you hear that from, by -- who told you that?

23 A. The unit. I mean, the nurses. I don't -- I don't remember
24 now who I specifically heard it from.

25 Q. What was it that you learned about it?

Caalmar4

Libiran-Danao - direct

1 A. That we're not supposed to give narcotics on a TBI patient.

2 THE COURT: On a what patient?

3 THE WITNESS: TBI. It's traumatic brain injury
4 patient.

5 THE COURT: Traumatic brain injury.

6 THE WITNESS: Yes.

7 Q. And did you understand at the time that Ms. Verzonilla was
8 involved in that? Was it your understanding at the time that
9 Ms. Verzonilla was involved in that in-service?

10 A. No.

11 Q. What was your understanding?

12 A. That it's a general knowledge, it's a general in-service,
13 that we need to ask the nurses, inform us that be careful in
14 giving narcotics to those kind of patients with traumatic brain
15 injury because they alter the medication of the patient.

16 Q. Are you familiar with a nurse by the name of Lucero, Agnes
17 Lucero?

18 A. She is our education -- educational -- education man -- not
19 manager. Nurse specialist, something. But she gives -- taught
20 us. It's my preceptor during my critical care training. She
21 is.

22 Q. And was she one of the people who shared with you when you
23 came back from the Philippines in September of '09 about this
24 TBI in-service?

25 A. I cannot remember who did.

Caalmar4

Libiran-Danao - direct

1 Q. When in September of '09 you came back?

2 A. 'Cause my son is going back to school then, so probably the
3 first week of September.

4 Q. Okay. I want to bring your attention to the middle of
5 September, on or about September 14th, '09. Do you recall
6 that date?

7 A. Yes.

8 Q. And what do you recall of that?

9 A. It's the incident that we have a missing narcotic.

10 Q. And that narcotics was?

11 A. Morphine.

12 Q. Did there ever come a time prior to that incident where you
13 learned that there were other morphine missing in the emergency
14 room?

15 A. Oh, I don't -- I don't know.

16 Q. You don't know or you don't remember?

17 A. I don't know.

18 Q. And who was it that initially learned that there was
19 missing morphine on 9/14/2009?

20 A. It's me who initially found out that there's some missing
21 morphine.

22 Q. And I want to -- I want you to look at DX13. Oh. You see
23 the black -- I'm sorry. You see the black binder? Yeah. Just
24 look on the side, DX13. Let me know when you have it. You can
25 turn it around.

Caalmar4

Libiran-Danao - direct

1 Okay. Does this document refresh your memory with
2 regard to this specific incident we're talking about?

3 A. Yes.

4 Q. All right. Does your name appear anywhere in any of these
5 pages?

6 A. Yes.

7 Q. Where does it appear?

8 A. At the bottom where my initial is, A. Libiran.

9 Q. Okay. So there's two pages. The first one, so we can
10 follow it.

11 A. And also the second one.

12 Q. Mm-hmm. And where are you initialing, on the bottom?

13 A. Yes. Number 8. A. Libiran.

14 Q. And on the second page, where does it appear?

15 A. Number 8, second page.

16 Q. Second page as well?

17 A. Number 9 is the first page and number 8 in the second page.

18 Q. I got you. Let me ask you, did you count -- did you count
19 the medication at the end of that night? Were you one of the
20 people who counted the medication?

21 A. No.

22 Q. Who counted the medication?

23 A. Based on this paper, it's DeJesus, as per the signature
24 here. It's DeJesus.

25 Q. Give us the number or the numbers there. What are you

Caalmar4

Libiran-Danao - direct

1 referring to?

2 A. It's here on the -- my right upper part, RN signature. It
3 says there DeJesus. C. DeJesus. And --

4 Q. That's signature number 1?

5 A. Signature number 1, correct.

6 Q. Okay. And is she the only one that counted the medication
7 at the end of that evening?

8 A. That evening she counted it with the incoming evening
9 shift, with J. Panes, number 8 on the first sheet, and
10 number --

11 Q. What number is on the second page?

12 A. The second page I cannot see, but he has stopped on the --
13 on the right lower side.

14 Q. Is there a number next to it so I can follow you?

15 A. There's not. Like total use in 24 hours, he has some
16 there.

17 Q. Now, ma'am, did you have to administer any morphine on that
18 day?

19 A. Yes.

20 Q. On how many occasions?

21 A. Four. Four. One, two, three -- four.

22 Q. Okay. And were you the individual who received the
23 medication from the pharmacy at 12 noon?

24 A. Yes, I am.

25 Q. Okay. And this is your handwriting that's in red?

Caalmar4

Libiran-Danao - direct

1 A. No.

2 Q. Whose handwriting is that?

3 A. It's from the pharmacy.

4 Q. And the numbers are from the pharmacy too in red?

5 A. Yes.

6 Q. And both 10/22 and 10/12 there?

7 A. Correct.

8 Q. And who -- who's Wendy?

9 A. It's the pharmacy who delivered -- pharmacist who delivered
10 narcotic.

11 Q. And you initialed next to it.

12 A. Yes.

13 Q. Is that a man or a woman?

14 A. It's a she.

15 Q. And you initialed next to that; right?

16 A. Yes, correct.

17 Q. On the bottom where it says 2 a.m. received, do you know
18 who entered that?

19 A. The 2 a.m.?

20 Q. Yes.

21 A. No.

22 Q. Do you know what that represents?

23 A. That they delivered the -- 2 a.m. they delivered one
24 Fentanyl PCA.

25 (Continued on next page)

CAABMAR5

Libiran-Danao - direct

1 Q. Okay. And are you familiar with those red initials shown
2 there?

3 A. No.

4 Q. And did you-- do you know who wrote-- and correct me if I'm
5 wrong-- in red on top? It said-- what does that say, DCA or
6 PCA?

7 A. It's the pharmacy's, I suppose. I'm not so sure.

8 Q. What are those letters?

9 A. PCA is patient control analgesia.

10 Q. Did you write anything in your handwriting on the second
11 sheet?

12 A. Yes.

13 Q. You also received the medication at noon with regard to
14 that medication. Right?

15 A. Correct.

16 Q. That's in red. When you refer to stat, that you were the
17 only individual that retrieved and administered Morphine for a
18 patient on that day?

19 MR. GARLAND: Objection to form.

20 THE COURT: The objection's sustained.

21 Q. What shift did you work on that day?

22 A. Seven a.m. to 7 p.m.

23 Q. Based on your training and knowledge, did anybody else get
24 any Morphine besides you on that day?

25 MR. GARLAND: Objection.

CAABMAR5

Libiran-Danao - direct

1 THE COURT: Ground?

2 MR. GARLAND: Same form. He's going to the-- I think
3 it's unclear what he's going to.

4 THE COURT: Do you understand the question? Do you
5 understand the question?

6 A. Can you repeat it?

7 Q. Sure.

8 Would it-- well, is there anybody else's handwriting
9 in the column of "Morphine" from 8:30 a.m. till 7 p.m. besides
10 the pharmacy?

11 A. It's only mine.

12 Q. And for those of us who are not too familiar with this
13 form, would it be fair to state that initially in the morning,
14 there were 12 vials of Morphine of 2 milligram tubexes in that
15 column?

16 A. Correct.

17 Q. And that there were 10 other tubexes of 2 milligrams added
18 as of noon?

19 A. Correct.

20 Q. So that gives us 22 in total?

21 A. Correct.

22 Q. And if you were the one that retrieved, based on your
23 earlier testimony, four tubexes, how much are you supposed to
24 wind up with at the end?

25 A. Twenty-two minus four is 18.

CAABMAR5

Libiran-Danao - direct

1 Q. Eighteen?

2 A. Yes.

3 Q. And is that what is reflected there just below 7 p.m., that
4 there were 18 tubexes left?

5 A. Because I used-- there are different kinds of Morphine. I
6 used a form-- three 4 milligrams of Morphine and I used 1
7 milligrams of-- one Morphine of 2 milligrams. So that makes
8 four Morphine tubexes. It's a different milligram or a
9 different concentration. So I added as four on a different --
10 how do you say -- different strength, I should say.

11 Q. Okay. So let me see if I understand. There were a need
12 for a total of 4 milligrams to be administered during your
13 shift?

14 A. During my entire shift, I used four-- three-- three tubexes
15 of 4 milligrams.

16 Q. Okay.

17 A. And one Tubex of 2 milligrams.

18 Q. Okay.

19 A. That makes four.

20 Q. All right. Let's concentrate on the column that you
21 received an additional 10 tubexes of 2 milligrams.

22 A. Okay.

23 Q. Can we just concentrate on that column?

24 A. Sure.

25 Q. All right. Can you tell me if between 8:30 a.m--

CAABMAR5

Libiran-Danao - direct

1 withdrawn -- between 12 p.m. and 7 p.m., if there is-- all
2 those entries are in your handwriting in black?

3 A. Yes.

4 Q. And were you assigned to room-- what room were you assigned
5 to based on this document?

6 A. Based on this document, I'm assigned on 516, 514.

7 That's --

8 Q. That's it, two rooms?

9 A. 514A and 516A.

10 Q. Okay. And would it be fair to state, at least from this
11 document, that you were the one who entered between 6 p.m. and
12 7 p.m.-- is that your handwriting over there between 6 p.m. and
13 7 p.m.? Is that your handwriting?

14 A. Yes.

15 Q. And the room number, that's your handwriting there?

16 A. Correct.

17 Q. 516A?

18 A. Correct.

19 Q. And for 7 p.m., is that your handwriting for 516A, Room
20 516A?

21 A. Correct.

22 Q. And is that your handwriting just below 7 p.m. where it
23 says "missing"?

24 A. Correct.

25 Q. Can you tell me this: On this, who was the person who

CAABMAR5

Libiran-Danao - direct

1 counted the med-- the medicine in the morning of 9/15-- I'm
2 sorry, 9/14/2009?

3 A. I-- it's C. DeJesus. I answered.

4 Q. I'm sorry?

5 A. C. DeJesus.

6 Q. Is that the person who also came in at nine?

7 A. Yes, towards the end of the shift.

8 Q. And does that apply to the second page?

9 A. Yes.

10 Q. Ms. Libiran-Danao, I asked you earlier whether you ever
11 threw Morphine tubexes or other narcotics tubexes in the cart
12 instead of the biohazard cart. Do you recall that?

13 A. Yes.

14 Q. And you stated that you never did that. Am I correct?

15 A. Never did on that date or as a practice?

16 Q. Any time as a practice.

17 A. As a practice, of course you cannot predict what you're
18 doing on that day. Like, for example, I have a patient. I get
19 their narcotic. I withdraw the medication, I put it on the
20 medication cart. Maybe I'll get it back, throw it in the bin.
21 Some other time I've totally forgot it. I attend to my other
22 patient. Somebody might throw it out.

23 So as a practice, I really cannot guarantee you all
24 the time I'm putting it on the bin-- on the sharps container.

25 Q. So there could have been other times where you just threw

CAABMAR5

Libiran-Danao - direct

1 them in the regular cart?

2 A. Probably so.

3 Q. Were you ever disciplined for that?

4 A. No.

5 Q. Did-- withdrawn.

6 Are you familiar with the practice, based on your
7 experience, of how the pharmacy delivers medication during the
8 course of the day?

9 A. It is every Wednesday when they deliver narcotics or the
10 controlled substances. And then whoever has the key, the
11 narcotic key, will receive it. And then they-- we accounted
12 it. Like in this sheet, you can see that we-- that pharmacy's
13 total-- totally-- the pharmacy will put in how much they added
14 and then we total it as the total balance of the-- of the
15 narcotics or the controlled substance. And then we both sign
16 on this sheet so as to acknowledge that we are on the right
17 accounting.

18 Q. Did there ever come a time where you needed to retrieve
19 medication from the pharmacy?

20 A. Yes.

21 Q. How often do you do that in a week?

22 A. I cannot tell that it's regular.

23 Q. On those occasions that you did, how long did it take you
24 to go to the pharmacy and retrieve whatever you need?

25 A. Depends how busy is the pharmacist.

CAABMAR5

Libiran-Danao - direct

1 Q. What was the longest?

2 A. Twenty, 15 minutes.

3 Q. You would just wait there for 15 to 20 minutes waiting for
4 the pharmacist to dispense the medication to you?

5 A. Yes.

6 Q. And did there ever come a time where you had an occasion
7 where you needed to order medication for your unit besides a
8 Wednesday?

9 A. Yes.

10 Q. And how often would you have to do that?

11 A. Depends on the needs of the unit that day.

12 Q. And how long in those occasions did it take the pharmacy to
13 deliver medications to your unit?

14 A. It will take a time.

15 Q. How long?

16 A. Hours.

17 Q. What was the longest?

18 A. Three hours, four hours.

19 Q. Now, ma'am, with regard to the incident of the missing
20 Morphine on 9/14/2009, were you ever disciplined for the
21 missing Morphine on that day?

22 A. No.

23 Q. Did you-- was the missing Morphine investigated?

24 A. Yes.

25 Q. Okay. What unit did you work in on that day?

CAABMAR5

Libiran-Danao - direct

1 A. I'm in District 3.

2 Q. And just tell me in your own words exactly what you had to
3 do, you personally had to do, in the total investigation of the
4 missing Morphine.

5 A. Okay. When I discovered that there's a missing Morphine--
6 because around seven I need to give Morphine to my patient. So
7 I opened the narcotic cabinet, and when I opened it, I saw two
8 boxes of Morphine: One is sealed and the other one is open.
9 We know that the sealed box contains 10 Tubexes, so that's
10 sealed and that's 10. So when I look at the other one, it's
11 open, so I took mine. I took the one that I need, the 2
12 milligrams. So I counted it, it's 18.

13 But, of course, right after getting it, my next duty
14 is to write it on the narcotics sheet. And then when I found
15 out when I'm about to write-- that's why I-- when I'm about to
16 write, I saw it's still 22. So in my mind, somebody took three
17 tubexes of Morphine. So I put-- I put 1/21, 1/22, and the
18 rest, because I'm thinking that my colleague might do it as a
19 late entry. But in the meantime I need to write it, write
20 mine, so I leave spaces for my colleagues, whoever got it,
21 because I'm not sure who got it.

22 So I give the medication to my patient, because
23 patient is in pain. So I gave the 2 milligrams Morphine, and
24 then I go back and ask my colleagues if they're using Morphine.
25 I ask actually twice. And then I call pharmacy to verify how

CAABMAR5

Libiran-Danao - direct

1 much is the last count of Morphine from the night just to make
2 sure that the count from the start is right. And it is right.

3 Then I ask again my colleagues and then nobody said
4 they used it. So I called my supervisor that we have a problem
5 here in I.C.U. that we are missing Morphine, three Tubexes of
6 Morphine. So she went down and investigate. And then, after
7 that, we called security-- she called security and all our
8 pocketbooks were checked. We were patted if there's really
9 Morphine. And then they didn't find anything, so we were sent
10 home.

11 But prior to that security incident, they asked me to
12 write a statement how-- what happened to the missing Morphine,
13 how I discovered the missing Morphine. And, also, I filled out
14 the missing narcotic form which is part of the hospital
15 protocol.

16 Q. Are you finished with your answer?

17 A. Yes.

18 Q. Did you get disciplined for writing between 6 p.m. and 7
19 p.m. that there were two missing Tubexes?

20 A. No.

21 Q. What is the policy at St. Barnabas with regard to filling
22 in for any of your colleagues that you were working with at the
23 time?

24 A. We're not supposed to leave spaces, but at that time I'm
25 like-- I don't know who did-- who took the Morphine. So I'm

CAABMAR5

Libiran-Danao - direct

1 presuming-- I presume that my coworkers put it in. So I put
2 the number because I just found in the bin 19 plus the one I
3 took, that the remaining will be 18.

4 Q. And besides calling your supervisor and getting searched
5 and then giving the statement, did anybody from the hospital
6 meet with you the following day?

7 A. Yes.

8 Q. Who was it?

9 A. I was called from home. I was called by my manager,
10 Ms. Pauline Lattery-- Frances-Lattery, to come in. I was off
11 that day. She called me to come into the hospital because
12 they're doing an investigation regarding the missing Morphine.

13 Q. What time was it that you showed up?

14 A. I know they called me around 9:30, so I need to prepare. I
15 live from-- I live in Rockland, going down to Bronx, is roughly
16 around an hour, after an hour. I'm not sure what exact time
17 is.

18 Q. And who else besides Ms. Libiran-Danao were there?

19 A. What I remember is Patty Byrne, the pharmacist, and
20 Ms. Libiran-Danao.

21 Q. Was Ms. Ondoy there?

22 A. I can't remember.

23 Q. Incidentally, the supervisor you called the evening before,
24 who was it?

25 A. It's Ms. Norma Ondoy.

CAABMAR5

Libiran-Danao - direct

1 Q. And what's the race of Ms. Ondoy, just to refresh our
2 memory?

3 A. It's Filipino.

4 Q. And did Ms. Byrne ask you about why you had to fill in
5 between 6 p.m. and 7 p.m. that there were two missing
6 Morphines-- two missing Morphine Tubexes during that time
7 period?

8 A. Can you repeat again, sir?

9 Q. Sure.

10 Did Ms. Byrne ask you, following when they made you
11 come all the way down from Rockland, why you wrote between 6
12 p.m. and 7 p.m. there were two missing Morphine Tubexes?

13 A. Yes.

14 Q. And what did you say to her?

15 A. Like I said to you today, that I presume that my coworker
16 will do the late entry. That's why I-- out of my thing that I
17 put the numbers out of my own self that I put the numbers for
18 them.

19 Q. And was Ms. Libiran-Danao there when you said that?

20 A. Yes.

21 Q. To all of them you said that?

22 A. Yes.

23 Q. They were all there.

24 And did anybody discipline you for doing that?

25 A. No.

CAABMAR5

Libiran-Danao - direct

1 Q. Now, correct me if I'm wrong here, ma'am. Your entry says
2 that at 7 p.m., right, you retrieved medication for patient in
3 Room 516A, one Tubex of 2 milligrams. Correct? Is that what
4 that says?

5 A. Can you repeat it again? I'm sorry.

6 Q. Well, you see where it says 7 p.m.?

7 A. Correct.

8 Q. Is that your handwriting?

9 A. Correct.

10 Q. And 516A?

11 A. Correct.

12 Q. That's the room where your patient that you had to
13 administer the Morphine to was. Correct?

14 A. Correct.

15 Q. And at 7 p.m. you retrieved one Tubex of 2 milligrams for
16 that patient. Correct?

17 A. Correct.

18 Q. And you had 19 left at the time that you retrieved that.
19 Correct?

20 A. No. When I opened the cabinet, I see one that is sealed
21 and the other is open, the other box of Morphine. Right? So
22 when I took mine and I counted it, it's 18.

23 Q. So how come you wrote here that as of 7 p.m. there were 19?

24 A. I-- I don't know why I did that.

25 Q. Thank you.

1 Going back to Ms.-- I'm sorry, Nurse Verzonilla.

2 Besides the in-service talk, did there ever come a time in
3 September of 2009 that you also learned that there had to be
4 round cause-- root cause analysis?

5 A. Like I told you, I heard it because is, like, right after
6 my vacation. So when I come back, they told me about what
7 happened. And then this is part of the in-service -- the
8 in-service is a result of the root cause analysis.

9 Q. Were you involved in that root cause analysis?

10 A. No.

11 Q. Did you attend it?

12 A. No.

13 Q. Do you remember testifying at my offices on November 10,
14 2011, in a deposition?

15 A. Yeah.

16 Q. Would you please take a look and let me know if that would
17 refresh your memory as to what you said at my office?

18 THE COURT: I'm terribly sorry. She hasn't testified
19 that her memory needs to be refreshed. If you wish to impeach
20 her, there is a time-honored way of doing it. And I really
21 insist she doesn't look at anything. You ask her, "Were you
22 deposed? Were you asked the following questions and did you
23 give the following answers?" You give your opponent the page
24 and line from which you are reading and then you do it.

25 Q. What's a grand round?

CAABMAR5

Libiran-Danao - direct

1 A. Grand rounds.

2 Q. Yes. What is that?

3 A. It's basically educating all the unit, the residents, the
4 doctors, regarding certain topics. Like, there's a grand round
5 for residents, there's a grand round for nurses based on their
6 expertise.

7 Q. Is that different than in-service talks?

8 A. Definitely, yes.

9 Q. So let me ask you this: Did there ever come a time in
10 September of 2009 where you had attended a grand round
11 regarding an incident that involved Ms. Venezuela?

12 A. Verzonilla.

13 Q. Verzonilla. Sorry.

14 A. I can't recall.

15 Q. Now going back to this DX 13, when you met with Ms. Byrne
16 and the other members that were investigating the missing
17 Morphine, were you questioned about this discrepancy between
18 you putting that there were two missing between six and seven
19 and one missing after seven?

20 A. Yes.

21 Q. And were you written up with regard to the latter -- the
22 latter entry after 7 p.m.?

23 A. No.

24 Q. Were you suspended or disciplined in any shape or form for
25 writing this late entry after 7 p.m.?

CAABMAR5

Libiran-Danao - direct

1 A. No.

2 MR. NUWESRA: Thank you. I have no other questions,
3 your Honor.

4 THE COURT: You may inquire.

5 MR. GARLAND: Thank you, your Honor.

6 CROSS-EXAMINATION

7 BY MR. GARLAND:

8 Q. You mentioned toward the beginning of your testimony this
9 afternoon that going back to, oh, around 2005, there was a
10 rotation in place where the nurses would take turns being the
11 charging nurse going from most senior to least senior.

12 Going back in that time, was Ms. Martinez the charging
13 nurse at times?

14 A. Yes.

15 THE COURT: I'm sorry, is it charging nurse or charge
16 nurse?

17 MR. GARLAND: Charge.

18 THE COURT: Charge nurse. Let's all use the same
19 term.

20 MR. GARLAND: Charge nurse.

21 Q. So was Ms. Martinez a charge nurse then at times going back
22 to 2005?

23 A. Yes.

24 Q. How do you know that?

25 A. Because I'm less senior than her. So if ever she got to be

CAABMAR5

Libiran-Danao - cross

1 charge, I'm there and I know that she's in charge. She's-- and
2 I remember that.

3 Q. Are you saying that there were days that you and she were
4 working --

5 A. Yes.

6 Q. -- when she was the charge nurse?

7 A. Yes.

8 Q. Were there also days when you and she were working together
9 that you were the charge nurse?

10 A. Yes.

11 Q. Let's go back now to Exhibit DX 13, Defense Exhibit 13.

12 And let me know when you're there. Are you there?

13 A. Yes.

14 Q. Okay. Let's look at the-- make sure we're all on the same
15 page. The first page at the top, it should say "St. Barnabas
16 Hospital" and then, to the right, roman numeral II. Do you see
17 that?

18 A. Yes.

19 Q. Then, to the right of that, it says "Drug Disposition
20 Record."

21 A. Yes, I can see.

22 Q. Now, let's come down a few lines to the line that says
23 "Count Brought Forward." Do you see that?

24 A. Correct, I saw it.

25 Q. Then, if you go to the right of that line or continue on

CAABMAR5

Libiran-Danao - cross

1 that line horizontally, the first number that you'll come
2 across is the number 5?

3 A. Yes.

4 Q. And then keep going across horizontally until you get to
5 the number 12. Do you see that?

6 A. Correct. Yes.

7 Q. And if you look above the number 12, you see "Morphine
8 sulfate 2 milligrams Tubex"?

9 A. Yes.

10 Q. So that means the count being brought forward at the
11 beginning of the shift in the medication cabinet was 12
12 Morphine sulfate 2 milligram Tubexes?

13 A. Yes, correct.

14 Q. Let's go over one more in that same line. "Count brought
15 forward," go over one more until you get to 17. Do you see
16 that?

17 A. Yes.

18 Q. And if you go above 17, you see the words "Morphine sulfate
19 4 milligrams Tubexes"?

20 A. Yes.

21 Q. So is that then a different dosage of Morphine sulfate than
22 the one immediately to the left?

23 A. Yes.

24 Q. And then the number 17 there means that there were 17
25 Tubexes of Morphine sulfate, 4 milligrams Tubexes, at the

CAABMAR5

Libiran-Danao - cross

1 beginning of the shift on the 14th of September?

2 A. Correct.

3 Q. I should say the day shift, beginning of the day shift.

4 A. Yes.

5 Q. And I think you also mentioned Mr. DeJesus's name.

6 So if you continue going to the right of the number
7 17, do you recognize that that's, at the right, Mr. DeJesus's
8 signature?

9 A. Yes.

10 Q. And that's verifying the count for the drugs listed on this
11 sheet at the beginning of the day shift on the 14th of
12 September?

13 A. Yes.

14 Q. Now, let's look at the column that has at the top "Morphine
15 sulfate 2 milligrams Tubexes." Then let's go down to 12 p.m.
16 where, on the left, it says "Pharmacy." Do you see that?

17 A. Yes.

18 Q. So we're going to start on the left where it says
19 "Pharmacy" and then move across horizontally until we get to
20 that "Morphine sulfate 2 milligrams Tubexes" column. Then the
21 numbers 10/22 appear.

22 A. Yes.

23 Q. Now, 10/22, does that reflect that at 12 noon on the 14th,
24 that another 10 Tubexes of the 2 milligram Morphine sulfate was
25 put in the medication cabinet in District 3?

CAABMAR5

Libiran-Danao - cross

1 A. Yes.

2 Q. So now, as of 12 noon on the 14th, this record shows a
3 total of 22 Morphine sulfate 2 milligram Tubexes?

4 A. Yes.

5 Q. Now let's keep going now. That same 12 p.m. line where it
6 says "Pharmacy," move over to the right again, and in red
7 there's another 10/12. Do you see that?

8 A. Yes.

9 Q. And that's for yet a different dosage of Morphine sulfate?

10 A. Yes.

11 Q. That's for the 30 milligrams?

12 A. Yes.

13 Q. And this record indicates that at 12 noon, that an
14 additional 10 of that particular dosage was added to the
15 medication cabinet in District 3?

16 A. Yes.

17 Q. Then, moving over to the right, again the same line, "12
18 p.m. Pharmacy." Moving over to the right, there's the stamp
19 "A. Libiran."

20 A. Yes.

21 Q. That's you?

22 A. Yes.

23 Q. And you placed the stamp there?

24 A. Yes.

25 Q. And then you would put your initials above it?

CAABMAR5

Libiran-Danao - cross

1 A. Yes.

2 Q. And then to the right, immediately to the right, the name
3 "Wendy" appears in red?

4 A. Yes.

5 Q. And Wendy, you said, is the pharmacy tech who made the
6 delivery when you were there?

7 A. Yes, correct.

8 Q. So you were working with Wendy to corroborate what she was
9 delivering so you could both note it on this record?

10 A. Yes.

11 Q. Now, let's again go back now to the column where the
12 heading is "Morphine sulfate 2 milligrams Tubexes." So we've
13 just looked at what was going on at noon. Let's continue down
14 that column now and there are four entries: 1/21, 1/20, 1/19
15 and 1/18. Do you see those?

16 A. Yes.

17 Q. Did you make those entries all at the same time?

18 A. Yes.

19 Q. And you did that at 7:00, when you went into the medication
20 cabinet to get the one Tubex of 2 milligram Morphine for your
21 patient?

22 A. Yes.

23 Q. Now, let's go back to the top and go to a different column,
24 the "Morphine sulfate 4 milligrams Tubexes."

25 During the course of your shift on September 14th, did

CAABMAR5

Libiran-Danao - cross

1 you also go into the medication cabinet and record that you had
2 taken out that dosage for patients of yours?

3 A. Four milligrams Morphine, yes.

4 Q. And you did that three times?

5 A. Three times.

6 Q. So the first looks like it was at 8:30 a.m. or 8:20 a.m.?
7 Can you tell the time?

8 A. Around 8:30, 8:20. 8:30.

9 Q. And then the handwriting is yours there, 1/16?

10 A. Correct.

11 Q. Which indicates that after you took one Tubex of the 4
12 milligrams, there were 16 Tubexes of the 4 milligrams left?

13 A. Correct.

14 Q. And if you continue going over horizontally, you initialed
15 that under the heading where it says "R.N. Signature
16 Administering"?

17 A. Correct.

18 Q. And to the right of that, is that your handwriting, to the
19 right of your initials?

20 A. Yes.

21 Q. And that's the doctor's name?

22 A. Yes.

23 Q. The doctor's name who gave the order for that particular
24 drug and dosage?

25 A. Yes.

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Libiran-Danao - cross

1 Q. Now let's go down to the-- again, stick again to the
2 "Morphine sulfate 4 milligrams" column. It looks like at
3 around-- is it 12:20 or 12:30, you went into the medication
4 cabinet in District 3 and took out one more Tubex of the 4
5 milligram Morphine sulfate?

6 A. Yes.

7 Q. And so then you recorded 1/15 indicating you had taken out
8 one and, after you took out the one, there were 15 left?

9 A. Correct.

10 Q. And going over to the right, far right in that same line,
11 you initialed and put the doctor's name in the next box?

12 A. Yes.

13 Q. And beneath that, it looks like 5:30 you went into the
14 medication cabinet and took out one Tubex of the Morphine
15 sulfate 4 milligrams that you recorded here. Is that right?

16 A. Yes.

17 Q. And so you put 1/14?

18 A. Yes.

19 Q. And that signified that after you took the one out of the 4
20 milligram dosage, there were 14 left?

21 A. Correct.

22 Q. And, again, same thing to the right. You initialed and put
23 the doctor's name?

24 A. Correct.

25 Q. Now let's go back to the Morphine sulfate 2 milligrams. So

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Libiran-Danao - cross

1 we're moving over one column to the left and then you've got
2 four entries: 1/21, 1/20, 1/19 and 1/18. And that reflected
3 after you went in and took out the one at around seven, there
4 were 18 Morphine sulfate 2 milligram Tubexes left?

5 A. Yes.

6 Q. Now, you also mentioned that you were asked to write a
7 statement on the evening of the 14th. Is that right?

8 A. Yes.

9 Q. Who asked you to write a statement?

10 A. It's Ms. Norma Ondoy.

11 Q. And what was her position again?

12 A. Nursing supervisor evening shift.

13 Q. Let me ask you to turn your attention to Exhibit 10 in the
14 binder in front of you, Defendant's Exhibit 10. Are you there?

15 A. Yes.

16 Q. Is that the written statement that you provided to
17 Ms. Ondoy on September 14th?

18 A. Yes.

19 Q. Since it's in your handwriting, would you please read for
20 the jury what you wrote?

21 A. Yes. "September 14th, 2009. To: Ms. Norma Ondoy, Nursing
22 Supervisor, St. Barnabas Hospital. From: AnaRicca
23 Libiran-Danao. Regarding: Missing narcotic. Dear Ms. Ondoy,
24 I'm writing this statement regarding the missing narcotic. At
25 7 p.m. when the doctor (Dr. Nandipati) of 516A ordered a stat

CAABMAR5

Libiran-Danao - cross

1 dose of Morphine 2 milligrams IV push, I discovered that there
2 were three Tubexes missing so all the staff were notified.
3 Pharmacy made aware and verified the last count. When
4 everything was done and still with no avail, nursing supervisor
5 was informed and security was called."

6 Q. Now, you also mentioned in your direct testimony that you
7 filled out a form of some sort. What kind of form was that?

8 A. It's missing medication form.

9 Q. I'm going to ask you to turn to DX-8, the second page.
10 Defendant's Exhibit 8, second page. Are you there?

11 A. Yes.

12 Q. Is that the form you were referring to?

13 A. Yes.

14 Q. And is that handwriting on that form yours?

15 A. Yes.

16 Q. Again, since it's your handwriting, would you please read
17 it for the jury?

18 A. Yeah. The date is 9/14/09. The shift is 7 a.m. to 7 p.m.
19 The unit is 5 North. Nursing report. Controlled substance
20 under investigation: Morphine 2 milligrams Tubexes. Time
21 shortage was discovered: 7 p.m. Name of person discovering
22 shortage," it's me, "AnaRicca Libiran. Details of the problem:
23 At 7 p.m. the M.D. of 516A ordered one dose stat of Morphine 2
24 milligrams. When I counted, it was found out that 2 milligrams
25 Tubexes is missing so all the staff was notified. Name of

CAABMAR5

Libiran-Danao - cross

1 senior nurse or charge nurse notified: Elizabeth doctor. Name
2 of nurse manager or supervisor completing this report:
3 Ms. Norma Ondoy."

4 Q. Let me just go back in the section "Details of the
5 problem." Could you just read that one more time, please? I'm
6 not sure you read all the words.

7 A. "At 7 p.m. the M.D. of 516A ordered a one stat dose of
8 Morphine 2 milligrams. When counted, it was found out that the
9 Morphine 2 milligrams Tubexes is missing so all the staff was
10 notified."

11 MR. GARLAND: Let me just look at my notes, your
12 Honor. I may be done.

13 THE COURT: Okay.

14 MR. GARLAND: I have nothing further of this witness,
15 your Honor.

16 THE COURT: Any redirect?

17 MR. NUWESRA: Yes, your Honor, a couple of quick ones.
18 REDIRECT EXAMINATION

19 BY MR. NUWESRA:

20 Q. Ms. Danao, you stated on cross that when you first in 2005
21 joined I.C.U-- withdrawn.

22 When in 2005-- when in 2005 did you join I.C.U.?

23 A. I can't remember the exact date.

24 Q. Can you remember the season?

25 A. Maybe before May or May. Around that time.

CAABMAR5

Libiran-Danao - redirect

1 Q. Around May?

2 A. April/May.

3 Q. And on cross-examination, you stated to-- during one of
4 your answers to Mr. Garland's questions that in 2005, when you
5 worked with my client, that you had observed her work as a
6 charge nurse. Is that correct?

7 A. Yes.

8 Q. Let me take your-- let me take your attention to DX 8. Do
9 you have it?

10 A. DX-8? Yes.

11 Q. When was it that you authored this? What time was it that
12 you authored this on the 14th of September, '09?

13 A. DX-8, the one that I wrote?

14 Q. Yes.

15 A. Yeah, September 14th, 2009.

16 Q. When was it? Was it in the evening?

17 A. 7 p.m.

18 Q. 7 p.m.?

19 A. Around that time.

20 Q. Is there any reason why your report states that only one 2
21 milligram Tubex was missing?

22 A. I didn't state that it's only 1 milligram. I said "M.D. of
23 516A ordered one dose of stat Morphine 2 milligrams. When
24 counted, it was found out that Morphine 2 milligrams Tubexes is
25 missing, so the staff nurse were notified."

CAABMAR5

Libiran-Danao - redirect

1 Q. Well, that the Morphine 2 milligram Tubex is, as in
2 singular. Correct?

3 A. Correct, but --

4 Q. That's all I need to know.

5 And the 2 milligram Tubex is the one that you are
6 testifying about on DX 13 that each Tubex was a 2 milligram
7 Tubex. Right?

8 A. Two milligram Tubex, but three missing Tubexes.

9 Q. But the three were in 2 milligram Tubexes. Right?

10 A. Tubexes.

11 Q. So each milligram was in one Tubex?

12 A. Two milligrams in each one.

13 Q. One Tubex. And when you wrote your report --

14 THE COURT: I'm sorry, I heard two voices there.

15 MR. NUWESRA: I'm sorry, your Honor.

16 THE COURT: Are you saying a single Tubex has 2
17 milligrams in it?

18 THE WITNESS: Correct.

19 THE COURT: Thank you.

20 Q. And in your report, you stated that there was a 2 milligram
21 Tubex is, singularly, missing. Correct?

22 A. It is written here, yes, but --

23 Q. Thank you.

24 MR. NUWESRA: I have no further questions, your Honor.

25 THE COURT: Anything else?

CAABMAR5

Libiran-Danao - redirect

1 MR. GARLAND: Just to follow up on this, if I may,
2 your Honor, real quickly.

3 RECROSS-EXAMINATION

4 BY MR. GARLAND:

5 Q. Looking at Defendant's Exhibit 8, that form, the reference
6 to the one dose statistic of Morphine, 2 milligrams, did that
7 refer to the Tubex that you were going to get for your patient?

8 A. Yes.

9 Q. And then later you wrote that "the Morphine 2 milligrams
10 Tubex is missing."

11 Let me ask this in the following way: Is English your
12 native tongue?

13 A. No.

14 Q. Do you always speak or write English correctly?

15 A. Not all the time.

16 MR. GARLAND: Nothing further, your Honor.

17 MR. NUWESRA: May I, your Honor?

18 THE COURT: You may.

19 REDIRECT EXAMINATION

20 BY MR. NUWESRA:

21 Q. At the time that you wrote this, were you in the master's
22 program?

23 A. Yes, I ...

24 THE COURT: Yes or no? Yes or no?

25 THE WITNESS: Yes.

CAABMAR5

LIBIRAN-DANAO - redirect

1 THE COURT: Thank you.

2 Q. And were those lectures and those classes, were they given
3 in English?

4 A. Yes.

5 Q. And when you were studying in the Philippines, were the
6 classes given in English?

7 A. Yes.

8 Q. Thank you.

9 MR. NUWESRA: I have no other questions.

10 THE COURT: Anything else?

11 MR. GARLAND: No, your Honor.

12 THE COURT: Okay. You may step down. Thank you.

13 (Witness excused)

14 THE COURT: We're going to take a five-minute break
15 and then we're going to come back. We'll go until 4:30. I
16 have a sentencing then. All right? Thank you.

17 (Recess)

18 (Jury not present)

19 THE COURT: Okay.

20 (Recess)

21 (In open court; jury not present)

22 THE COURT: I'm ready. As long as I'm sitting here,
23 I'm ready to go. Sorry.

24 (Jury present)

25 THE DEPUTY CLERK: All right. Jury present.

CAABMAR5

LIBIRAN-DANAO - redirect

1 THE COURT: Have a seat. Call your next witness.

2 MR. NUWESRA: Good afternoon, your Honor. Plaintiff
3 calls Ms. Lisa Greene.

4 THE COURT: Ms. Greene, won't you come up, please.

5 (Witness sworn)

6 THE CLERK: Please state and spell your name for the
7 record.

8 THE WITNESS: Lisa D. Greene, G-r-e-e-n-e.

9 THE COURT: You may inquire.

10 LISA D. GREENE,

11 called as a witness by the Plaintiff,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. NUWESRA:

15 Q. Good afternoon, Ms. Greene.

16 A. Good afternoon.

17 Q. My name is Lee Nuwesra and I'm the attorney representing
18 Ms. Martinez in this case.

19 Would you kindly tell us whom you're employed by?

20 A. St. Barnabas Hospital.

21 (Continued on next page)

22

23

24

25

Caalmar6

Greene - direct

1 BY MR. NUWESRA:

2 Q. And how long have you been employed by St. Barnabas?

3 A. 27 years in May.

4 Q. Can you tell us very briefly about your educational
5 background, starting with college, or post high school.

6 A. I have an associate in applied science. Currently I'm
7 doing my BS and a master's combined at Mercy College.

8 THE COURT: At Mercy College?

9 THE WITNESS: Yes.

10 THE COURT: Okay. If you can speak into the
11 microphone, ma'am, it would help.

12 THE WITNESS: Better?

13 THE COURT: Oh. Much better. Yes. I just have some
14 issues, okay? Thank you so much.

15 BY MR. NUWESRA:

16 Q. Can you tell me the current position that you have with St.
17 Barnabas.

18 A. Registered nurse.

19 Q. And what unit are you assigned to?

20 A. Emergency department.

21 Q. How long have you been assigned to the emergency
22 department?

23 A. Approximately 15 years.

24 Q. And do you float to any other department -- withdrawn.

25 Have you floated to any other department within St.

Caalmar6

Greene - direct

1 Barnabas in the last 15 years? Let's make it shorter. Within
2 the last five years?

3 A. No.

4 Q. Okay. Are you familiar with the ICU unit?

5 A. Yes.

6 Q. What shift do you work?

7 A. Flex shift, 7A, 7:30.

8 Q. And 7A as in 7 a.m.?

9 A. Yes.

10 Q. That's three days a week?

11 A. Three days a week, but I wear two hats at St. Barnabas.

12 Q. And what is the other hat?

13 A. I'm also the contract administrator for 1199.

14 Q. And how long have you been the contract administrator for
15 1199?

16 A. Approximately 15 years.

17 Q. And for those of us who are not familiar what a contract
18 administrator is, can you explain it to us, please.

19 A. Contract administrator is a representative of the nurses.
20 There are delegates, and then I'm their support. What my job
21 is, I enforce the contracts. When there are violations to the
22 contract, management and I, we sit down and we discuss
23 grievances and things like that.

24 THE COURT: Can I ask you a question. Is it fair to
25 say that you're the union representative? Is that the way to

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Greene - direct

1 put it, you're the union representative?

2 THE WITNESS: Well, like delegates are also
3 representatives, but that's fine, yes.

4 THE COURT: But you're one of the union
5 representatives for the nurses.

6 THE WITNESS: Exactly, yes.

7 THE COURT: Thank you.

8 THE WITNESS: You're welcome.

9 BY MR. NUWESRA:

10 Q. And do you represent the nurses throughout the hospital or
11 just in different units, specific units?

12 A. The entire hospital.

13 Q. Are there any --

14 A. And clinics.

15 Q. I'm sorry.

16 A. And clinics.

17 Q. Are there any other union representatives, representatives
18 that wear two hats like you at St. Barnabas representing the
19 registered nurses?

20 A. I'm going to address the question. The two hats that I
21 talk about -- you asked me before if I work three days a week.
22 I work two days as a nurse in the emergency department. The
23 other day I work solely as a union representative. The other
24 representatives don't have that. They're just delegates, and
25 we call upon them if there's a grievance or something like

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Greene - direct

1 that. So they -- in a way, they wear two hats, but not --
2 they're not paid for the day by the union. That's what I'm
3 trying to tell you.

4 Q. Oh, I see. So you get paid for two days by the hospital,
5 and the other day the union pays you.

6 A. That's correct.

7 Q. I see. Thank you.

8 A. You're welcome.

9 Q. And can you -- withdrawn.

10 Would it be fair to state that in having been wearing
11 those two hats at the hospital over the last 15 years, you are
12 pretty familiar with the hospital's policies regarding
13 different things?

14 A. Yes.

15 Q. Can you tell the jurors, what is the hospital policy with
16 regard to orders for lab testing?

17 A. I'm not sure I understand the question.

18 Q. Let me ask it differently. As a nurse, as a registered
19 nurse, can you order a lab test?

20 A. No.

21 Q. Who at St. Barnabas can order a lab test?

22 A. The doctors.

23 Q. In that light, do these lab -- is there a policy with
24 regard to these doctors' lab tests?

25 A. Yes, there is.

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Greene - direct

1 Q. And what is the policy?

2 A. The policy on lab testing, if there is a lab test to be
3 done, the doctor order is written and then the nurse or
4 whoever, whether it be the lab technician who will come, draw
5 the blood or take the specimen, whatever the order may be.

6 Q. And did I hear you correctly? Did you say written orders?

7 A. Yeah, written orders.

8 Q. I see. Can you share with us an example of what these lab
9 tests might entail that needs written orders by a physician.

10 A. A patient comes to a unit, any unit, the doctor will order
11 labs. In light of the fact -- when a nurse has experience, she
12 knows basically what those labs will be, so I just want to say
13 that up front. When the doctor comes, he will order like
14 chemistry labs, maybe urinalysis, maybe toxicology. Whatever
15 he feels the patient needs, he will order it. And then it's up
16 to the nurse to call the proper person, whether it be her --
17 herself or someone else, to draw those labs or urine
18 specimen --

19 Q. Okay.

20 A. -- sputum, whatever.

21 Q. And so that I'm very clear about this, these examples have
22 to be ordered by a physician at St. Barnabas and be in writing;
23 right?

24 A. Before it's enforced, yes.

25 Q. Thank you. I want to bring your attention to -- withdrawn.

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Greene - direct

1 During the last five years while working in the
2 emergency room, did there ever come a time where there was an
3 incident or incidences of missing morphine there?

4 A. Yes.

5 Q. When was that, ma'am?

6 A. I don't recall. I'm sorry.

7 Q. I'm sorry?

8 A. There was such an incident, but I don't remember when it
9 was.

10 Q. Was it within the last five years?

11 A. Yes.

12 Q. And do you remember an incident that took place which
13 involved my client, Ms. Martinez?

14 A. Are you talking emergency room?

15 Q. Any incident that involved --

16 A. Yes.

17 Q. Okay. Do you recall when that happened?

18 A. Not the exact date.

19 Q. All right.

20 A. Approximate.

21 THE COURT: Approximately when?

22 THE WITNESS: Two years ago.

23 THE COURT: Two years ago? Thank you.

24 THE WITNESS: A few years.

25 THE COURT: A few. I'm sorry. See, I misheard.

Caalmar6

Greene - direct

1 Q. In relation to that incident that involved my client a few
2 years ago, when was it -- was this emergency missing
3 morphine -- did it happen before my client was involved with
4 that incident?

5 A. I don't recall that. I don't know if it was before or
6 after, to be honest with you.

7 Q. Yeah, before or after. I'm asking you.

8 A. I don't know.

9 Q. Oh, you do not know whether it was before or after.

10 A. No.

11 Q. Okay. Can you tell me in sum and substance what the
12 missing morphine in the emergency room entailed. What
13 happened?

14 A. There was a miscount in the morphine. I was not present
15 that day, but when I came back to work, I heard about the
16 incident, and that's how I came to know about it.

17 Q. Okay. And were nurses under your jurisdiction as the union
18 representative involved in that incident?

19 A. Whenever there is a missing narcotic or if there's a
20 miscount of any sort, all the nurses on the unit is involved.

21 Q. Okay. And to the best of your recollection was anybody
22 disciplined? Was any -- were any nurses disciplined with
23 regard to that missing morphine narcotics in the emergency?

24 A. No.

25 Q. Were you involved in the investigation of that missing

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Greene - direct

1 morphine?

2 A. No.

3 Q. Now can you explain to the jurors the process when an
4 employee, a nurse that you represent, is involved in the
5 discipline. What takes place?

6 A. One of two things will occur. Either the management person
7 will call me and tell me that they need my services for a
8 member or -- sorry, can you hear me? -- or the member will
9 call me directly and say, "I have a issue," and then either
10 way, from that point, the process is the same. I'll go and
11 I'll speak with the member and find out what the problem is.
12 After that, if necessary, I have a joint meeting with
13 management.

14 Q. And in your capacity as a union representative, once you
15 start in the disciplinary proceedings, do you deal with a
16 certain office of the hospital?

17 A. No.

18 Q. Who do you deal with? Let me ask you --

19 A. I'm --

20 Q. Let me ask you, is there a unit or department at St.
21 Barnabas that's known as the labor relation?

22 A. We have labor -- we have a labor management meeting every
23 second Thursday of the month.

24 Q. Okay.

25 A. I don't know if that's what you're referring to.

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Greene - direct

1 Q. Well, do they have a human resources department?

2 A. Yes.

3 Q. When does the human resources department get -- get
4 involved in disciplinary proceedings?

5 A. They get involved at the third step level. I'll just
6 explain that. There are three steps before an arbitration.
7 The first step, if the member comes to me with a grievance, I
8 take it up with the manager, the direct manager. If I can't
9 get a resolution within a week's time, I will step it up to the
10 head of the department. If I can't get a resolution at the
11 head of the department, that's when it still goes to human
12 resources. That's the third step.

13 Q. Do you recall what department or what unit my client was
14 working at at the time of that incident --

15 A. Yes.

16 Q. -- a few years ago? What unit was it?

17 A. ICU.

18 Q. And who is the head of ICU? Who was the head of ICU?

19 A. Do you mean the manager?

20 Q. The manager, yeah.

21 A. Pauline --

22 Q. You said direct manager. I'm sorry.

23 A. Pauline Frances-Lattery.

24 Q. And who is the head of the department that oversees the
25 ICU?

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Greene - direct

1 A. Cathy Graham. Catherine Graham.

2 Q. Do you recall if anybody else was also involved in the
3 disciplinary situation that involved my client, if there was
4 another nurse involved?

5 A. Yes.

6 Q. Who was it?

7 A. Cora Fischer.

8 Q. Can you tell me about that process with regard to both
9 Ms. Martinez and Ms. Cora Fischer. To the best of your
10 recollection, what happened?

11 A. I'm not sure -- you're asking me the process of the
12 grievance process?

13 Q. Well, when you got involved. You got involved at one
14 point; right?

15 A. Mm-hmm. Okay. I got a phone call that told me that there
16 was need for representation in the ICU. There was an issue of
17 narcotics. When I was able to come, I arrived. I was able to
18 speak to Ms. Martinez and I was able to speak to Cora Fischer.
19 That's when I find out what happened in this -- in the ICU.

20 Q. And what was your understanding of what happened?

21 A. My understanding was that there was missing -- well, there
22 was a discrepancy in the narcotic count. The two narcotics in
23 question, one was Ativan, the other morphine. One was over
24 two, one was correct, in other words. And that's -- it was
25 under two initially and then it corrected itself, the count.

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Greene - direct

1 Yeah. That's -- I had the same look.

2 Q. Okay. Explain yourself, please.

3 A. The Ativan that was to be given to the patient, the count
4 was leveled off as correct as -- I mean, I don't want to jump
5 the gun. I'm answering your question.

6 Q. Yes.

7 A. So the morphine apparently was under as if someone removed
8 morphine from the narcotic cabinet, and that's what caused the
9 discrepancy to --

10 Q. And you used number two under when it came to morphine.
11 Can you tell us what that means in layman's language.

12 A. Okay. When you remove narcotics from a narcotic cabinet,
13 there has to be an accounting, and so the nurse has to sign her
14 name and she has to deduct the narcotic and then tally it at
15 the bottom. Apparently at the end of that shift, there was a
16 discrepancy in that count from what was on the paper and then
17 what's in the narcotic cabinet itself.

18 Q. And when you mentioned the number two under, what did you
19 mean by that? Maybe it wasn't the number two you were saying.
20 You said something about two under.

21 A. Oh. I was saying the morphine was 2 milligrams. I'm
22 saying morphine tube.

23 Q. Okay. So there was one morphine tube, 2 milligrams
24 missing?

25 MR. GARLAND: Objection, leading.

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Greene - direct

1 THE COURT: We're just trying to get this clarified, I
2 think.

3 MR. NUWESRA: Yeah, that's all.

4 THE COURT: Well, I understand. Otherwise the
5 objection would be well taken. Let's see if we can get this
6 clarified, then please don't lead the witness.

7 A. The morphine that was in -- there was a discrepancy in the
8 morphine. This is what I understand. And there was
9 discrepancy in the Ativan. Those two medications were wrong
10 versus -- what's in the narcotic cabinet versus what's on the
11 paper. Both of those.

12 Q. Do you remember like how much was missing of each initially
13 or --

14 A. No.

15 Q. Okay. Was there any other reason why Ms. Fischer was
16 involved in this discipline process, besides what you just
17 testified about?

18 A. Before Ms. Martinez, she was the last one holding the
19 narcotic key, and then there was an issue with Ms. Fischer with
20 some crossing out that she did on a narcotic sheet that was not
21 policy.

22 Q. What's the policy about that?

23 A. If you're gonna cross out a medication or anything in a
24 chart, you have to draw a line and you write "Error" on it and
25 you initial it.

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Greene - direct

1 Q. And who is supposed to do that?

2 A. Whoever made the error. If I made an error and I deducted
3 wrong or if I put something in the wrong spot, the policy is to
4 draw a line through, "Error," initial. So the person can still
5 see what happened, in other words. You're not supposed to like
6 scribble on the paper.

7 Q. Okay. And do you know who made that correction in the
8 incident we're -- you're testifying about? Do you know which
9 one of the two nurses made the correction in that incident?

10 A. Cora.

11 Q. Cora made the correction.

12 A. Mm-hmm.

13 Q. Did there ever come a time within the last five years that
14 a similar happening took place whereby another nurse in the
15 emergency room or in ICU had made or committed that violation
16 of the policy, besides this one incident?

17 A. Not that I'm aware of.

18 Q. And what does the policy dictate if somebody makes the
19 correction and does not initial it?

20 A. If -- repeat your question?

21 Q. Sure. You said that there was a policy that St. Barnabas
22 requires that if somebody makes an error, that they should
23 cross the error and make the corrections and then initial it;
24 right?

25 A. Yes.

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Greene - direct

1 Q. And so my question to you, under that policy, what if
2 somebody, you know, makes the corrections without crossing and
3 initialing it? What happens to that person, that nurse?

4 A. Well, that's a violation of the policy, and what happens is
5 really up to management what they do. That's where I come in.
6 So if the infraction doesn't fit what they're saying -- for
7 instance, I'll give you an example.

8 Q. Sure.

9 A. If they scribbled like they're not supposed to scribble or
10 they did something other than what the policy dictates, it's up
11 to the management what they do about it. They can pull them in
12 and do something verbal, say, "In the future don't do this," or
13 they can suspend the nurse, or they can do anything they want
14 to do. If there is a discipline with regard to anything like
15 that, of course that's going to come to my desk and then that's
16 how I see it and then that's when I go and get involved.

17 Q. Based on your experiences or experience in wearing these
18 two hats at St. Barnabas, did there ever come a time where you
19 heard of the term "progressive discipline"?

20 A. The what?

21 Q. Progressive discipline?

22 A. Yes.

23 Q. What is that? Please tell the jury.

24 A. Progressive discipline is when a first infraction occurs.

25 Using your example, a first infraction, that should be a verbal

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Greene - direct

1 warning to the nurse. If it occurs again, that's a written
2 warning. That's progressive discipline. If it occurs again,
3 could be a suspension. If it occurs again -- I mean,
4 suspension, a one-day suspension. Then it could go to two days
5 and so on.

6 Q. Okay. Now with regard to the incident of my client and
7 Ms. Fischer -- and I can say that the record indicates that
8 took place on September 14, 2009. So keeping that date in
9 mind, make it easier for both of us, do you remember whether
10 Ms. Fischer called you first or my client or was it management
11 that contacted you?

12 A. No.

13 Q. How did it -- oh, you don't recall what happened.

14 A. I don't recall who called me first.

15 Q. Was there ever a time where a so-called investigation
16 meeting or conference took place where you were involved in?

17 A. Yes.

18 Q. Okay. Can you tell the jurors about that.

19 A. After I have a conversation with both members and
20 management -- 'cause I have to have all three sides before I
21 can really investigate -- then I go and investigate the facts
22 as it occurred. According to what Ms. Fischer tell me and
23 according to what Ms. Martinez tell me, I check both sides. I
24 was -- at that time I was able to look into the chart and those
25 kind of things like that, because they're allowed access during

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Greene - direct

1 the investigation. And then that's how I conducted my
2 investigation. And I also speak to the members. "What is your
3 recall -- recollection of this? What do you remember? Who had
4 the key? How did this happen?" I question everything, even
5 the condition of the patient in question.

6 Q. Okay. And did there ever come a time, based on your
7 recollection, that either Ms. Martinez or Ms. Fischer were
8 suspended because of that one incident, that one infraction?

9 A. Yes.

10 Q. And did either one of them choose to grieve the suspension?

11 A. Both.

12 Q. They both sought to grieve the suspension.

13 A. Yes.

14 Q. And did you get involved with that?

15 A. Yes.

16 Q. Do you know whether Ms. Fischer was ever returned from her
17 suspension?

18 A. Yes.

19 Q. And do you know how long her suspension was?

20 A. Yes.

21 Q. How long was it?

22 A. Three days.

23 Q. And how did Ms. Fischer learn that she should go back to
24 work after the three-day suspension?

25 A. There was a meeting in management's office.

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Greene - direct

1 Q. Was she present?

2 A. Yes.

3 Q. You're sure of that.

4 A. Yes.

5 Q. Okay.

6 A. Okay.

7 Q. And did you represent my client in the grievance of her --
8 in her grievance after she grieved it?

9 A. Yes. I started.

10 Q. You started.

11 A. Yes.

12 Q. Why did you stop?

13 A. Because Ms. Martinez cut off contact. I could not reach
14 her.

15 Q. Okay. And how did you try to reach her?

16 A. Via telephone and via mail.

17 Q. Do you remember when you spoke with her after her
18 suspension, if you spoke with her at all?

19 A. Multiple, multiple times.

20 Q. And how long after the suspension did you speak with her on
21 multiple, multiple times?

22 A. How long meaning a week or two weeks?

23 Q. Yeah.

24 A. I really can't recall when she cut off contact, but I know
25 we used to talk pretty much daily before contact was cut off.

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Greene - direct

1 Q. And how long did you speak daily?

2 A. Hours sometimes.

3 Q. I mean, on how many times, how many occasions?

4 A. Oh. More than 15.

5 Q. Okay. Did there ever come a time where you had a three-way
6 conference with Ms. Martinez and her sister?

7 A. I don't recall if it was the sister, but someone, yes. It
8 was a three-way conversation.

9 Q. A female?

10 A. A female, yes.

11 Q. Did you -- at the time did you understand that that female
12 also happened to be a lawyer?

13 A. Yes. She told me.

14 Q. Okay. And how long after her suspension did you have that
15 three-way conversation?

16 A. I don't remember that.

17 Q. Was it immediately before she cut off communications with
18 you, as you said?

19 A. No. It was well before that.

20 Q. It was before? Do you recall the sum and substance of this
21 three-way conversation you had with her and this other woman?

22 A. Do I recall the substance?

23 Q. Yeah.

24 A. I believe -- best of my recollection is that she told me
25 that it's her sister and her sister's going to be on the line,

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Greene - direct

1 if I can explain to her what's going on with the case.

2 Q. Okay. And did you explain to her what was going on with
3 the case?

4 A. Yes, I did.

5 Q. Did there ever come a time during that conversation where
6 you advised both of them that you felt conflicted in
7 representing both of them?

8 A. No. But I can clarify that.

9 Q. Please.

10 A. I said that Ms. Martinez and Ms. Fischer were both 1199
11 representatives. Both their stories were conflicting. It
12 didn't -- I was not going to represent both of them. That's
13 the clarity on that. So of course they will both have
14 representation, but I just would not have done both.

15 Q. Okay. And do you know another union delegate or
16 representative by the name of Nadine Williamson?

17 A. Yes, I do.

18 Q. Who's Miss Nadine Williamson?

19 A. She's the organizer and my superior.

20 Q. Do you recall that during that conference with Ms. Martinez
21 and this other woman that you stated that you would be
22 referring my client to Ms. Nadine Williamson?

23 A. No.

24 Q. Did there ever come a time where Ms. Nadine Williamson took
25 over the representation of my client?

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Greene - direct

1 A. No.

2 Q. Never?

3 A. Well, we worked together. She's my superior. So whatever
4 I'm doing, she's involved in. And we work together. So if I
5 call Martinez -- Ms. Martinez or Ms. Fischer, either of us can
6 call because we have the same information. You understand?

7 Q. All right. I hear you.

8 A. Okay.

9 Q. After these 15 or so conversations that you had with
10 Ms. Martinez, did there ever come a time when you learned that
11 she had hired her own private attorney?

12 A. She talked to me about that several times.

13 Q. Okay. And can you tell me whether -- withdrawn.

14 Can you tell me what the proper procedure is for
15 management when they're communicating with an employee that is
16 being represented by the union.

17 A. The job of management, if an employee needs representation,
18 they're not usually -- I'm not saying it doesn't happen
19 sometimes, but not usually are they supposed to engage in any
20 conversation with a member without a rep there -- without a
21 representative there.

22 Q. Does that also include when they are out on suspension?

23 A. Yes.

24 Q. So would it be fair to state that the communication should
25 be directed from management to the union with a copy to the

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Greene - direct

1 employee?

2 A. That is correct.

3 Q. And is that required in every -- in every instance?

4 A. No. Every case has its own situation.

5 Q. Okay. Can you tell me about the various cases where that
6 would not be required.

7 A. Where what would not be required, management to contact the
8 union?

9 Q. No, management to contact the employee without any regard
10 to the union.

11 A. What I can tell you is the procedure. I don't know if that
12 ever occurred or do occur. All I know is that if there is a
13 communication -- if a member is out, whether it be a
14 suspension, a termination, or whatever it is, and then the
15 union is fighting this case, they're supposed to have a
16 communication with the union. Whether they have a right to
17 have a communication with the member, we all get involved in
18 that. If management would have a conversation with the member
19 and it had anything to do with a deal, that's a violation, and
20 we call that direct dealing, and they cannot do that. They
21 have to go through us and then we go through them.

22 Q. All right. So would it be fair to state that in order to
23 make any deal with an employee that is being represented by the
24 union, any deal or any offer should be filtered through the
25 union?

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Greene - direct

1 A. That's correct.

2 Q. Did there ever come a time where you related to my client
3 that the hospital was offering her the option of resigning?

4 A. Yes.

5 Q. Was this conversation during the telephone conference you
6 had with this other third person?

7 A. On the three-way conversation?

8 Q. Yes.

9 A. On the three-way conversation I explained to her the entire
10 case, all of her options. Not just an option to resign; all of
11 her options. She had several options.

12 Q. Okay. What were those options?

13 A. She had the option of coming in, having a conversation with
14 Ms. Graham, who was the VP of nursing at the time.

15 Ms. Martinez never did that. So -- the second option was the
16 grievance process, to which we could have gone through the
17 third step.

18 Q. I'm sorry?

19 A. The second option is that we could have gone through the
20 entire grievance process, where we would have gone through the
21 third step through human resources, heard the case, and then if
22 no resolution, there's the arbitration. That's the second
23 option.

24 And the third one, of course, was the resignation with
25 a neutral reference. And by the way, the resignation with a

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Greene - direct

1 neutral reference, that isn't always a given. We have to
2 negotiate that.

3 Q. Did there ever come a time where Ms. Graham told you
4 personally to contact my client and tell her that she is free
5 to come back to work?

6 A. No.

7 Q. To your knowledge did there ever come a time whereby
8 Ms. Graham advised anybody within your union organization that
9 they can tell my client that she's free to come back to work?

10 A. The free to come back to work is the deal that's confusing
11 me a little. Ms. Graham asked me to contact Ms. Martinez on
12 several occasions, and I was not successful in doing so.

13 Q. And what was the purpose of you contacting Ms. Martinez?

14 A. To come in and discuss the case. We have not done that,
15 sir. We have not even done the second step.

16 Q. And what is your usual mode of communications with your
17 members?

18 A. With a member?

19 Q. Yeah.

20 A. It could be any -- I could go to their home, I can talk on
21 the telephone, or via letter. It depends on, you know,
22 their --

23 Q. Did you ever send a letter to Ms. Martinez?

24 A. Yes. Not personally from my computer but the headquarters,
25 1199.

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Greene - direct

1 Q. Under your signature?

2 A. No.

3 Q. Did you address it?

4 A. No.

5 Q. Did you dictate it?

6 A. Yes.

7 Q. Under whose signature was it?

8 A. I'm not sure if Nadine signed it or not, but that's where
9 the communication was.

10 Q. And do you know whether it was during your suspense --
11 during her suspension or whether it was post her termination?

12 A. Letters were sent before. We needed to contact Martinez.
13 We were not able to do so. I tried many times and so did
14 Nadine Williamson.

15 Q. Did you try to go and see her at home?

16 A. No.

17 Q. Why not?

18 A. I didn't have that -- let's say I didn't -- number one, I
19 didn't have her address. Not that I couldn't get it, but in
20 order for me to go to someone's home, I need to be invited. I
21 don't just come.

22 Q. Did you ever ask Ms. Martinez to invite you to her house?

23 A. No.

24 Q. Did there ever come a time where you learned that my client
25 was terminated?

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Greene - direct

1 A. Yes.

2 Q. When was it?

3 A. I don't recall the date.

4 Q. How did you learn of it?

5 A. I was told.

6 Q. By?

7 A. Ms. Graham.

8 Q. What did she say to you?

9 A. She said that she attempted to contact Ms. Martinez, as
10 myself, and she was unsuccessful and she didn't respond, so she
11 was going to terminate her.

12 Q. Did she tell you when she tried to contact Ms. Martinez
13 before her termination?

14 A. She -- well, when she attempted to contact Ms. Martinez and
15 she was unsuccessful, she would call me and tell me that she
16 tried to reach her and she was not able to do so, for me to try
17 again, and then I would try again, and try. So I don't
18 remember -- she did say when, but I just don't know the date.
19 I don't know the date.

20 Q. Did the union ever grieve Ms. Martinez's termination?

21 A. No.

22 Q. Did -- do you know whether Ms. Martinez ever asked the
23 union to grieve her termination?

24 A. No. She did not.

25 Q. She never asked that her termination be grieved?

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Greene - direct

1 A. Ms. Martinez, before we cut off communication, tells me
2 that she was going to hire an attorney and do it on the outside
3 basis. I also advised her that. You didn't ask me to describe
4 that, but yes.

5 Q. Go ahead. Say what?

6 A. She told me that she was going to hire an outside attorney,
7 and I figured that's why the communication was cut.

8 THE COURT: I thought you said, "and I figured." I
9 didn't hear what you said.

10 THE WITNESS: Which one?

11 THE COURT: Could you read back her answer.

12 (Record read)

13 THE COURT: Okay. In other words, you thought that's
14 why you weren't able to reach her, because --

15 THE WITNESS: She was doing her thing.

16 THE COURT: She was doing her thing. Okay.

17 BY MR. NUWESRA:

18 Q. As far as you or the union was concerned, did she have the
19 right to do that?

20 A. Yes. And there are some procedures with that also. She
21 has to sign a waiver.

22 Q. Okay. And do you know whether she was willing to sign such
23 waiver with the union?

24 MR. GARLAND: I'm going to object. I think we're
25 getting rather far afield.

Caalmar6

Greene - direct

1 THE COURT: We are. This has nothing to do with
2 anything. Please get back to this case. Move on.

3 MR. NUWESRA: May I approach the witness, your Honor?

4 THE COURT: You may.

5 Q. And this is DX21. Please take a look at that. Let me know
6 when you've finished.

7 A. Finished.

8 MR. GARLAND: Objection.

9 THE COURT: I'm sorry. Hang on. There's no question
10 to object to. He asked her to look at something. That's all
11 he did. You have nothing to object to. He could hand her the
12 telephone book and say, "Look at this." You have no objection.
13 If he asks an objectionable question, then you can object.

14 Q. Ma'am, you remember I asked you about five minutes ago
15 whether my client sought the grievance for -- of her
16 termination by the union?

17 THE COURT: Now are you trying to impeach her with
18 prior inconsistent testimony?

19 Ma'am, give me this thing.

20 I thought I told you how to do that. I'm not going to
21 take you back to school again. Either you follow the
22 procedures that are set out for doing that in our evidence
23 courses that we take in law school or you don't do it. One of
24 the two.

25 MR. NUWESRA: But she didn't testify, your Honor --

Caalmar6

Greene - direct

1 THE COURT: Excuse me. Excuse me. Excuse me. If
2 that's not what you're doing --

3 BY MR. NUWESRA:

4 Q. Does the document that you just reviewed --

5 MR. NUWESRA: I withdraw that question, your Honor.

6 THE COURT: Are you trying to refresh her
7 recollection? She hasn't testified that she doesn't recall
8 something, so there's no recollection to refresh. There's no
9 failure of recollection here.

10 Q. Okay. Do you remember when you testified that both you and
11 Ms. Williamson -- that both you and Ms. Williamson were
12 together working, representing my client?

13 A. I was the one handling the case. What I said was that
14 she's aware of all cases that I do, so if Ms. Williamson calls
15 Ms. Martinez or any other member, she's able to do so because
16 she's aware of what the case is. That's what I was trying to
17 say.

18 Q. And isn't it -- withdrawn.

19 Were there any communications between my client and
20 Ms. Williamson during that time period?

21 THE COURT: How is she supposed to know? And that
22 would be hearsay. So --

23 Q. When an employer terminates a nurse -- let's talk about St.
24 Barnabas -- are they required to communicate that to the
25 headquarters, to the headquarters in downtown, of 1199?

Caalmar6

Greene - direct

1 A. Yes.

2 Q. And who would be the RN organizer to contact with regard to
3 that?

4 A. Nadine Williamson.

5 Q. Did there ever come a time where you became aware that the
6 hospital contacted Ms. Nadine Williamson regarding my client's
7 termination?

8 THE COURT: Did you ever become aware of any such
9 communication between the hospital and Ms. Williamson; yes or
10 no?

11 THE WITNESS: No.

12 Q. Now would you please tell us what was the outcome of --
13 withdrawn.

14 Can you tell us whether there was ever a meeting that
15 was held between my client, the union, and management.

16 A. Not at the initial meeting. One meeting --

17 Q. I'm sorry?

18 A. One meeting, not at the --

19 Q. Any meeting. Any meeting.

20 A. The initial meeting where there was the suspension, yes.

21 Q. Okay. And when was that?

22 A. I don't remember the date.

23 Q. How long after the incident of September 14th was that
24 meeting?

25 A. How -- repeat the question?

Caalmar6

Greene - direct

1 Q. How long after the incident of September 14th would that
2 have been?

3 A. Did what?

4 Q. Did that suspension meeting take place between the union,
5 my client, and management.

6 A. I don't recall that.

7 Q. Was it the same day that the meeting with Ms. Fischer,
8 yourself, and management took place?

9 A. Yes.

10 Q. Now did both of them attend that meeting or were they
11 separate?

12 A. They both attended the meeting.

13 Q. And did they have to sign any acknowledgment as to what the
14 charges against them were or what the violations were?

15 A. No.

16 Q. Were they given a written statement as to what the
17 violations were?

18 A. Yes.

19 Q. And to the best of your recollection what were they accused
20 of?

21 A. I don't recall what was on the paper.

22 Q. Did there ever -- withdrawn.

23 What is the policy with regard to toxicology, urine
24 toxicology at the hospital? Can a nurse ask another nurse to
25 do it?

Caalmar6

Greene - direct

1 A. To collect the specimen?

2 Q. Yes.

3 A. Yes.

4 Q. And would there have to be, even in that incident, or
5 instance, a written order by physician to do so?

6 A. Yes.

7 THE COURT: In other words, so I understand, if a
8 doctor wrote an order and communicated that to Nurse Jones,
9 Nurse Jones could say to Nurse Brown, "Go get this sample."

10 THE WITNESS: Absolutely.

11 THE COURT: Okay.

12 Q. Are you familiar with Ms. Lucero?

13 A. Agnes Lucero? Yes, I am.

14 Q. What is her position with the hospital?

15 A. She's a staff nurse.

16 Q. And was she also -- did she ever hold a different position
17 back in '09?

18 A. Yes.

19 Q. What was that position?

20 A. She was an educator.

21 Q. And did she have the right to ask another nurse without a
22 doctor's written order to get a urine toxicology to the lab,
23 urine toxicology report?

24 A. Not without a doctor's order.

25 Q. At the time that she was an educator, did she also

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Greene - direct

1 supervise or manage when Ms. Lattery wasn't there?

2 A. I don't know.

3 Q. Was she -- what unit was she assigned to?

4 A. ICU.

5 Q. And who is Norma Ondoy?

6 A. A supervisor.

7 Q. Incidentally, at that disciplinary meeting that you held
8 with the -- with the employee and management, who was there,
9 from management?

10 A. Ms. Ondoy and Ms. Pauline Frances-Lattery, myself, and the
11 two members.

12 Q. And do you know whether Ms. Lattery was working on the day
13 of the incident or not?

14 A. No.

15 Q. Can you tell me what is Ms. Catherine Graham's position in
16 the hospital now.

17 A. Vice president of nursing.

18 Q. Ms. Graham continues to be the vice president of nursing?

19 A. No.

20 Q. What's her position now?

21 A. She's a vice president but of a different department.

22 Q. And at the time of this incident what was her full title?

23 A. Vice president of nursing.

24 Q. Was she senior vice president of nursing?

25 A. That's possible. Yeah, possible -- yeah, senior vice

Caalmar6

Greene - direct

1 president, yes.

2 Q. Can you tell me whether St. Barnabas had a policy or
3 practice with regard to charge nurses.

4 THE COURT: A policy? Can you just ask her a question
5 so we can get into this.

6 Q. Does St. Barnabas have a practice with regard to charge
7 nurses?

8 A. Yes.

9 Q. What is that practice?

10 A. Depends on the unit you work. It varies.

11 Q. Okay. And how does it work in the emergency room?

12 A. We have a charge nurse that --

13 MR. GARLAND: Objection on relevance to the emergency
14 room.

15 THE COURT: Objection sustained.

16 Q. Did there ever come a time where my client floated to the
17 emergency room and worked at the time that she worked there?

18 A. Yes.

19 Q. When she worked in the emergency room, what was the policy
20 regarding charge nurse?

21 MR. GARLAND: Objection again to the emergency room.

22 THE COURT: No questions about the policy in the
23 emergency room.

24 Q. Were you familiar with the policy at the ICU with regard to
25 charge nurses?

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Greene - direct

1 A. Yes.

2 Q. Okay. What is that policy?

3 A. Depending upon the census and the staff, the charge nurse
4 does the nursing assignments. She may or may not have an
5 assignment, depending upon the census.

6 MR. NUWESRA: I'm sorry. Can I have that read back
7 for me, your Honor.

8 THE COURT: Yeah, read it back.

9 (Record read)

10 Q. Do you know who assigned the charge nursing tasks in ICU?

11 THE COURT: The charge nursing tasks?

12 Q. Who assigned the tasks? Who assigned --

13 A. It's in the job description for the charge nurse. She
14 oversees the department, she does the assigning, and if there's
15 an issue in that department, in your case ICU, then she would
16 address that. That's the charge nurse.

17 MR. NUWESRA: Your Honor, would this be a good time to
18 stop?

19 THE COURT: How much more do we have on direct with
20 this witness?

21 MR. NUWESRA: Maybe another 20 minutes.

22 THE COURT: You're kidding. Okay. Let's stop for the
23 day. We'll resume at 9:30 tomorrow morning. Don't discuss the
24 case. Keep an open mind. Okay. Thank you very much.

25 (Jury excused) (Continued on next page)

CAABMAR7

(In open court; jury not present)

THE COURT: Let's talk for a minute. Have a seat, everyone, please. Look, this is the wrong witness to discuss this document with. She's not copied on the document; she didn't write the document. If Ms. Williamson is testifying, fine. If Mr. Wolf is testifying, fine. It's actually, I think, a Defendant's exhibit in evidence so you can't-- as far as I'm concerned, it's already established in the case that there is such a document because the defendants offered it into evidence themselves, but you can't discuss it with this witness. She didn't say "I don't remember whether the lady grieved or didn't grieve." She said she didn't grieve.

So, please, you can refresh somebody's recollection when they say "I don't recall," not when they say "no" and you think the answer is yes. You can impeach someone with a prior inconsistent statement as long as you do it by the book. And I'm just a total stickler for that. But this document -- first of all, as far as I could tell, you could make whatever argument you want to make with this document because it's already in, but there's nothing you can ask this lady about with respect to this document.

MR. NUWESRA: I appreciate that, your Honor. Can I-- I would like to make an application that I will be allowed to call Ms. Santiago as witness in this case.

THE COURT: No. Nobody who's not on your witness

CAABMAR7

1 list. I'm sorry.

2 MR. NUWESRA: But she was, your Honor.

3 THE COURT: No, she wasn't. We went through the
4 witness list and you said who you were going to call and who
5 you weren't going to call at the final pretrial conference.

6 MR. NUWESRA: Right.

7 THE COURT: And you are limited by that. You're
8 limited by that.

9 MR. NUWESRA: I understand.

10 THE COURT: At the final pretrial conference you said
11 "I'm not calling Ms. Santiago."

12 MR. NUWESRA: I didn't say that, your Honor. I said
13 I'm calling her. You asked me why and I said two reasons. And
14 I have the transcript.

15 THE COURT: If you said you're calling her, why are
16 you asking me for permission? Just call her.

17 MR. NUWESRA: Because for some reason the transcript
18 doesn't say that I can have her. And I have a copy of the
19 transcript.

20 THE COURT: I don't understand what you're saying. If
21 you said "I'm going to call her," then you can call her. If
22 you said to me "I'm not going to call her," then you can't call
23 her. Okay? It's that simple. It's that simple.

24 MR. NUWESRA: Okay.

25 THE COURT: But you can't say to me last week "I'm not

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1 going to call her," and then today say "I want to call her."

2 MR. NUWESRA: Okay. I did say it. It's in the
3 transcript, your Honor.

4 THE COURT: As long as you said "I'm going to call
5 her," you can call her.

6 MR. NUWESRA: Thank you. I appreciate it.

7 MR. GARLAND: Your Honor, I can go back and look at
8 the transcript, but the order says she's out.

9 MR. NUWESRA: Well, that's the confusion, your Honor.
10 I can hand you the transcript--

11 THE COURT: Hand me the transcript. Hand me the
12 transcript.

13 MR. NUWESRA: Oh, sure. Sure.

14 THE COURT: You think I remember? I don't remember.

15 MR. NUWESRA: Yes, okay. Okay. Okay.

16 THE COURT: No, furnish me with the page. I don't
17 want to spend time looking for the page. I have people here
18 for a sentencing. I have a lot of work to do.

19 MR. NUWESRA: May I approach?

20 THE COURT: Yes. Give me the page. Don't make me
21 find it.

22 MR. NUWESRA: Okay. No problem.

23 MR. GARLAND: It looks like page 3 of the transcript,
24 your Honor.

25 THE COURT: Yes?

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1 MR. GARLAND: Line 10. It starts at line 6 really.
2 Or 4 you ask-- line 4.

3 THE COURT: I didn't say she couldn't testify.

4 MR. NUWESRA: Right.

5 THE COURT: She can testify.

6 MR. NUWESRA: Thank you, your Honor. The confusion is
7 on the list. The confusion is from the list.

8 MR. GARLAND: But the pretrial order does say she's
9 out.

10 THE COURT: I don't care. If I crossed off the wrong
11 name by mistake, I don't care. I didn't say in the transcript
12 she can't testify. And now I certainly know why she ought to
13 testify.

14 MR. NUWESRA: Thank you, your Honor.

15 MR. GARLAND: Are we dismissed, your Honor?

16 THE COURT: Yes.

17 (Adjourned to October 11, 2012 at 9:30 a.m.)
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